

Agenda

City Council Study Session

MONDAY
June 21, 2004

6:00 – 8:00 p.m.
Council Conference Room
Page

1. Executive Session

- (a) Property disposition (*approximately 15 minutes*)
- (b) Potential litigation (*approximately 15 minutes*)

2. Study Session

- | | | |
|--|---|-------------|
| (a) 2005 – 2011 Operating Budget – Early Outlook
Financial Forecasts for General fund, Utility
Funds, Development Services Fund, and Parks
Enterprise Fund | FIN
Jan Hawn/
Joe Guinasso/
Jonathan Swift | <u>2-1</u> |
| <i>(For information and discussion)</i> | | |
| (b) Update on implementation of new solid waste
contract | UTIL
Brad Miyake | <u>2-26</u> |
| <i>(For information and discussion)</i> | | |
| (c) Overview of City's Deferred Compensation (IRC
Section 457) Plan and recommendation to contract
with Great West Retirement Services as Plan
administrator | HR
Jill David | <u>2-28</u> |
| <i>(For information and discussion. Staff seeks
Council's direction whether to develop a
negotiated contract and Plan document for
consideration in July 2004)</i> | | |

City Council meetings are wheelchair accessible. American Sign language (ASL) interpretation is available upon request. Please phone 452-6805 at least 48 hours in advance.



City of Bellevue

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| (d) Proposed ordinance authorizing the issuance and sale of Limited Tax General Obligation Bonds for the New City Building | FIN
Jill Hawn | <u>2-54</u> |
|--|------------------|-------------|

(Council authorized the City Manager to proceed with sale of bonds as part of the Finance Plan for the New City Building at a Special Session held on June 1. A Special Session to approve sale of the bonds is scheduled for Thursday, June 24, at 12:00)

3. Discussion

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| (a) * Application of Franklin West LLC for a rezone amending the existing Concomitant Agreement for Kelsey Creek Center to allow Health Club uses of less than 5,000 square feet (File No. 03-131400-LQ) | HE | <u>3-1</u> |
|--|----|------------|

(This is an opportunity to pose questions on this quasi-judicial matter. Council action is scheduled for July 6, 2004. The site of this application is within the East Bellevue Community Council)

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|--|----|------------|
| (b) * Application of Overlake Hospital Medical Center and City of Bellevue for the rezone of five parcels from Office Limited Business (OLB) to Institutional District (I) (File No. 04-104728-LQ) | HE | <u>3-8</u> |
|--|----|------------|

(This is an opportunity to pose questions on this quasi-judicial matter. This item is scheduled for Council action on July 6, 2004)

- * Quasi-judicial matters are those in which the Councilmembers sit as “judges” to decide issues involving specifically-identified property or other rights between individuals or parties. This is as opposed to the Council’s usual role of acting in a legislative or policy-making capacity.

(Study Session may reconvene after the Regular Session if all items are not completed prior to 8:00 PM)

CITY COUNCIL BUDGET REVIEW SESSION ITEM

SUBJECT:

Early Outlook Financial Forecasts: General Fund, Utility Funds, Development Services Fund, and Parks Enterprise Fund.

STAFF CONTACT:

Jan Hawn, Finance Director 452-6846
 Joe Guinasso, Assistant Finance Director 452-4481
 Jonathan Swift, Budget Manager 452-7863

POLICY ISSUES:

The Financial Forecast is a building block of the Budget process which provides the financial parameters around which other policy decisions can be made.

BACKGROUND/ANALYSIS:

The Early Outlook illustrates how we expect the City's finances as a whole to perform over the six year period from 2005-2010. The Early Outlooks differ from full Forecast updates in that they are based on only a few months of actual revenue and expenditure data for the current fiscal year and that not every revenue and expenditure account is re-evaluated (e.g., recreation fees and charges for services). Their purpose is to help provide a financial framework in which preliminary Council direction can be provided.

Some of the benefits of forecasting include:

- Provides insight into the long-term financial effects of current policies, programs, and priorities;
- Provides an early warning for potential problem areas to watch where alternative strategies may need to be developed;
- Assists in strategic decision-making and long-range planning efforts by allowing Council to see how programs fit within the overall context of City finances; and
- Illustrates the bottom line effect of current budget decisions on future resources.

It is important to stress that the results of these Early Outlook Forecasts will differ from the results of the full Financial Forecast presented in September. Each Forecast includes different sets of assumptions. As the budget process proceeds, and more information becomes available, assumptions are modified as necessary.

At the April 12th Council session, staff presented a First Early Outlook. This first glimpse assumed, during the course of the budget, staff would be able to make additional reductions totaling \$1.5 million per year without significantly impacting services. The April First Early Outlook projection included these service reductions in the baseline projection, creating a surplus in 2005 and 2006.

The current Forecast shows significantly different results for available discretionary revenue compared to the April 12th First Early Outlook. In summary, the current Forecast projects a \$1.5 million budget gap in 2005 and a \$1.1 million budget gap in 2006. In contrast, the April 12th First Early Outlook projected a \$0.8 million surplus in 2005 and a \$0.2 million surplus in 2006.

Departmental presentations with Council have illustrated the degree of belt tightening and budget reductions that have occurred over the past three years. In addition, departments have begun discussions with the City Manager and Finance staff detailing the ramifications of additional reductions. In short, reductions of this magnitude (\$1.5 million) will impact service levels and should be discussed with Council during their upcoming budget discussions in conjunction with revenue enhancements, service level changes, and program modifications.

This memo is accompanied by four attachments. Attachment 1 focuses on the General Fund Early Outlook Forecast. This section includes a detailed description of major assumptions that frame the Early Outlook as well as a detailed discussion of the major revenue and expenditure drivers.

Attachments 2, 3, and 4 include brief discussions of the Utility, Parks Enterprise, and Development Services Fund Forecasts.

2005-2006 Key Milestones

In addition to this discussion, the Utilities Department will provide a detailed presentation of major drivers and issues in their Forecast to Council on **June 28th**. Other related upcoming presentations include:

June 28th – CIP Update. Includes a discussion of major drivers and issues associated with the General CIP

July 6th – Revenues. Provides a discussion and context of revenue alternatives.

July 12th – Budget Workshop #2. Includes a recap and discussion of all items to date. Council provides specific direction for the budget process.

Weeks of September 27 and October 25th – Full Financial Forecast. Provides the underlying financial framework on which the 2005-2006 Preliminary Budget is built.

Alternatives:

NA

ATTACHMENT(S):

1. 2005-2010 General Fund Early Outlook
2. 2005-2010 Utility Funds Early Outlook
3. 2005-2010 Development Services Fund Early Outlook
4. 2005-2010 Parks Enterprise Fund Early Outlook

Attachment 1

2005-2010 General Fund Early Outlook

Overview:

This attachment is divided into four sections:

- Section I: Economic Outlook discusses the major economic trends affecting the Forecast.
- Section II: Early Outlook Results summarizes the major revenue and expenditure trends in the current forecast.
- Section III: Resource Highlights provides a detailed discussion of the predicted growth or decline of the major economically sensitive revenue sources. Includes a discussion of major issues and risks associated with select revenues and issues not included in the base Forecast.
- Section IV: Expenditure Highlights provides an overview of the major drivers of expenditure growth in the Forecast. Includes a detailed discussion of major drivers and other issues not included in the base Forecast.

Section I: Economic Outlook

The Forecast assumes a continued slow economic recovery. Revenues will recover at different rates, depending on their sensitivity to key factors such as employment, inflation, and personal income. These key factors affect retail sales, vacancy rates, and new development.

Retail Sales. As the economy continues to recover, retail sales are expected to improve and grow at a moderate pace (an average of 5.4%), exceeding growth rates of the last biennium. The Lincoln Square development is expected to generate ongoing retail sales tax for the City beginning in 2006. However, for financial planning purposes the Forecast anticipates a modest revenue increase beginning in 2006 (\$500,000 or 1.8% of General Fund sales tax). As more detailed information becomes available, revenue estimates will be updated and included in the Full Financial Forecast.

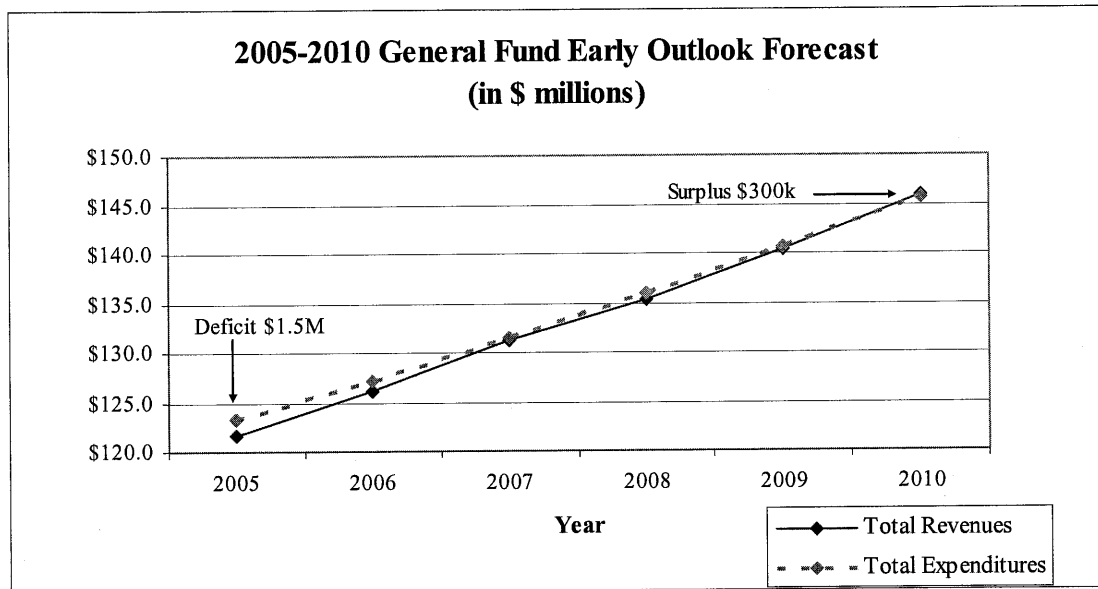
Vacancy Rates. Office vacancy rates in the central business district (CBD) have continued to decline and are expected to rapidly recover this year. Significant leases, either completed or anticipated, are projected to reduce the CBD vacancy rate from 19% to 10% by the end of 2004. As vacancy rates fall, new commercial structures will become financially viable and additional construction may begin.

New Development. As the recovery continues, employment growth is expected to increase slightly in 2005, with steady growth through 2010. Businesses relocating in the CBD, along with new construction and growth, will continue to lift Bellevue from recession through the Forecast period. New development growth positively impacts property tax and sales tax. Declining office vacancy rates and new commercial development positively impact business and occupation (B&O) tax and utility taxes.

Attachment 1

Section II: Early Outlook Results

While the long-term economic prospects for Bellevue are positive, the Forecast results illustrate that, without intervention, expenditures will exceed revenues in most years. However, the total deficit declines over time, reversing to a surplus by 2010. In 2005, the projected deficit is \$1.5 million; by 2010, this deficit reverses to a surplus of \$300,000 (see graph and data table below). On average, resource growth is expected to keep pace with expenditure growth, increasing an average of 3.6% per year through the Forecast period.



(in \$ millions)

	2005 Base Forecast	2006 Base Forecast	2007 Base Forecast	2008 Base Forecast	2009 Base Forecast	2010 Base Forecast
Total Revenues	\$121.7	\$126.1	\$131.1	\$135.2	\$140.5	\$145.9
Total Expenditures	123.2	127.2	131.4	135.9	140.6	145.7
Uncommittted Resources	-\$1.5	-\$1.1	-\$0.3	-\$0.7	-\$0.1	\$0.3

Even though the economy is improving and revenues are increasing, revenue growth is not sufficient to fully offset expenditure increases in 2005. These increases include:

- Health Benefits costs (\$1.2 million or 15%)
- State mandated retirement plans (\$823,000 or 28%)
- Workers' Compensation Costs (\$237,000 or 41%)

Combined, these three factors represent \$2.3 million or 43% of the expenditure growth in 2005 (for further discussion of these items see Section IV: Expenditure Drivers).

Attachment 1

The following summary table illustrates that expenditures exceed resources in most years. At the same time, the resource rate of growth generally outpaces expenditure growth in four of the six Forecast years. The two notable exceptions are

- In 2005, when premiums for health benefits, workers' compensation and State pension rates increase simultaneously and expenditures grow by 4.4%. At the same time, a \$400,000 decline in telephone utility tax reduces net growth in resources to 3.1% (for details, see Section III: Resource Highlights).
- In 2008, when the effect of B&O apportionment takes effect, reducing resource rate of growth to 3.1% while expenditure growth continues at 3.4% (for details, see Section III: Resource Highlights).

2005-2010 Financial Forecast General Fund \$000

	2005 Base Forecast	2006 Base Forecast	2007 Base Forecast	2008 Base Forecast	2009 Base Forecast	2010 Base Forecast
<u>RESOURCES</u>						
Beginning Fund Balance	\$3,476	\$3,578	\$3,710	\$3,858	\$3,978	\$4,132
Taxes	90,102	93,387	97,261	100,147	104,318	108,630
Intergovernmental Revenues	14,129	14,672	15,213	15,769	16,197	16,633
Charges for Services	11,534	11,926	12,339	12,766	13,211	13,671
Licenses and Permits	137	141	146	151	156	161
Miscellaneous	1,216	1,298	1,345	1,393	1,444	1,497
Fines and Forfeits	374	370	384	398	413	428
Other Finance Sources	693	710	731	753	775	797
Total Resources	\$121,662	\$126,083	\$131,128	\$135,234	\$140,492	\$145,949
Incremental Change From Prior Year %	3.1%	3.6%	4.0%	3.1%	3.9%	3.9%
<u>EXPENDITURES</u>						
Personnel	\$79,563	\$82,597	\$85,633	\$88,908	\$92,331	\$96,116
Maintenance & Operations	42,899	43,874	45,016	46,212	47,416	48,671
Contingency	730	756	787	811	843	876
Total Expenditures	\$123,192	\$127,228	\$131,436	\$135,932	\$140,590	\$145,662
Incremental Change From Prior Year %	4.4%	3.3%	3.3%	3.4%	3.4%	3.6%
Total Uncommitted Resources \$	(\$1,530)	(\$1,145)	(\$308)	(\$698)	(\$100)	\$287
Percentage of Total Budget %	-1.3%	-0.9%	-0.2%	-0.5%	-0.1%	0.2%
General Fund Staff						
FTEs	880.3	877.1	864.1	864.1	864.1	864.1
LTEs	10.0	5.0	-	-	-	-

Attachment 1

Section III: Resource Highlights

This section includes a) a general discussion of resources; b) a detailed discussion of taxes; and c) a detailed discussion of other revenues.

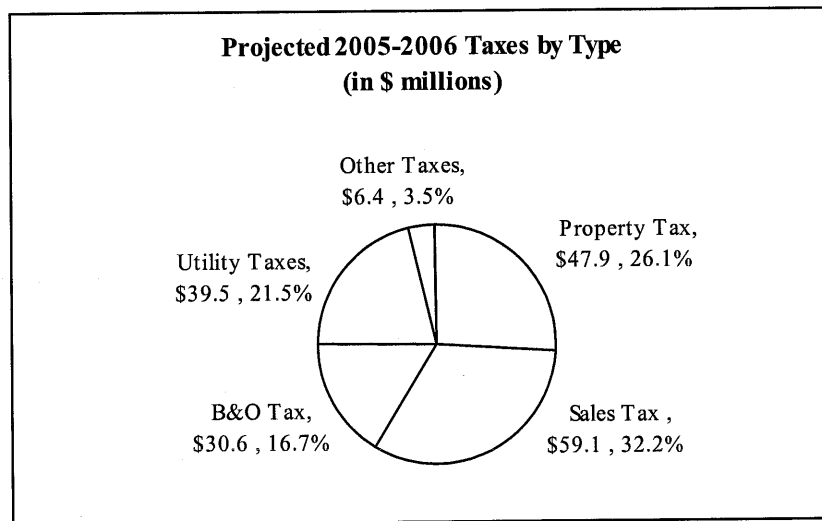
A. Summary

Resource growth is expected to be 3.1% in 2005 and then accelerate to an average of 3.7% from 2006 through 2010. If the economy continues to recover, the outlook for most economically sensitive taxes (74% of all resources) is positive. The exception is telephone utility tax, which experienced an unexpected drop during 2004. The cause of this drop is not known at this time but is forecasted to reduce receipts of this tax by \$400,000 per year compared to the 2003-2008 Mid-biennium estimate (see detailed discussion under B. Taxes).

Prospects for other revenues (26% of all resources) are also generally positive with the exception of fines and forfeits which is expected to decrease during 2005 (\$289,000). This decrease is due to the change to the contract with King County executed in November 2003 for the provision of municipal services (see detailed discussion in C: Other Revenue Groups).

B. Taxes:

For the 2005-2006 biennium, taxes are estimated to comprise 74% or \$183.5 million of all General Fund resources. This group consists of sales, property, business and occupation (B&O), utility taxes, and other miscellaneous taxes. The following table illustrates the Forecasted percentage and amount by tax category for the 2005-2006 biennial budget.



As the economy recovers, taxes are projected to grow during the Forecast period. Each tax is discussed below.

Sales Tax (\$59.1 million or 32.2% of taxes). Collections are expected to increase (average of 5.4%) during the Forecast period. Ongoing sales tax is expected to be bolstered by the completion of Lincoln Square (\$500,000 per year beginning in 2006).

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Contracting, retail trade, and wholesaling, which comprise 77% of the sales tax base, grew between 8% to 20% in the first five months of 2004 compared to the first five months of 2003. Each of these sectors is expected to continue this course of growth.

The Forecast does not include one-time sales tax associated with the construction of Lincoln Square and the Overlake Hospital expansion. The potential General Fund allocation of one-time sales tax associated with these projects is estimated at \$1 million over three years (from 2005 to 2007).

Property Tax (\$47.9 million or 26.1% of taxes). Some increases are expected to occur in the early years of the Forecast as major new complexes are constructed. The Forecast assumes no property tax increase, other than from the authorized increases for new construction and adjustments for refunds, omitted assessments for prior years, etc.

- **Initiative 864.** The Forecast does not include any assumption for potential loss of property tax authority associated with Initiative 864. Initiative 864 is designed to reduce non-voted regular property tax levies by 25%. If approved, this initiative could remove roughly \$6.5 million in property tax authority per year from the City of Bellevue (\$13 million for the biennium).

Business and Occupation Tax (B&O) (\$30.6 million or 16.7%). B&O tax projections contemplate growth due to the anticipated increase in employment for the region. Bellevue's B&O collections in wholesaling, retailing, and services grew by 4% to 6% in the first quarter of 2004. These sectors comprise 85% of the B&O tax base. The model assumes that growth is a function of inflation and employment growth.

- **Impact of Apportionment.** State legislative changes to the B&O tax are expected to adversely affect Bellevue's General Fund and Capital Improvement Program Fund (CIP) beginning in 2008. Apportionment may narrow our current tax base by reallocating a portion of it to other jurisdictions. Growth is expected to average 4.6% through the Forecast period, despite the effects of B&O apportionment in 2008. The legislative changes are very complex and impacts are difficult to estimate and prone to estimation error. However, preliminary estimates of reductions are between \$1 million and \$3 million for the General Fund and up to \$1 million for the CIP beginning in 2008. The General Fund impact is included in the Forecast; the CIP impact will be reflected in the 2005-2011 CIP update.

Other Taxes (\$6.4 million or 3.5%). This tax category includes criminal justice sales tax, admissions tax and business tax penalty. Criminal justice sales tax is distributed based on the proportion of Bellevue's population compared to King County and the State's population. This revenue is expected to grow an average of 5.1% during the Forecast. Admissions tax and business tax penalties are expected to rise at the rate of inflation.

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Utility Taxes (\$39.5 million or 21.5% of taxes). Utility taxes consists of several taxes. The following table illustrates the relative proportion of each utility tax for the 2005-2006 biennium.

Projected 2005-2006 Utility Tax Revenues by Type
(in \$ millions)

<u>Utility Tax</u>		
Electric	\$10.5	26.5%
Telephone	9.9	25.1%
Cellular Phone	7.7	19.4%
Gas	3.7	9.4%
Wastewater	2.5	6.3%
Garbage/Solid Waste	2.2	5.4%
Water	2.1	5.4%
Storm/Surface	0.9	2.5%
Total	\$39.5	100.0%

Electric (\$10.5 million or 27% of utility taxes) and Gas (\$3.7 million or 9% of utility taxes) Utility Taxes. Gas and electric utility taxes are expected to grow an average of 3.3% and 3% respectively per year through the Forecast period. This increase does not take into account additional growth associated with declining office vacancy rates as a conservative revenue estimating practice. No rate increases are anticipated during the Forecast period.

Telephone Utility Tax (\$9.9 million or 25% of utility taxes). In recent months, telephone utility tax has declined substantially. Year over year collections are declining in the double digits for some vendors. Bellevue's Budget and Tax Offices are actively searching for an explanation. Further analysis and research is needed to understand the reasoning for the decline. For the purposes of the Forecast, telephone utility tax expectations were decreased by 10% for 2004 (\$500,000) and future growth is assumed to average 3.2% from this lowered base. For modeling purposes, growth is the composite of inflation and population growth.

- **Potential Additional Loss or Recovery.** Without understanding the drivers behind the sudden and unexpected loss of telephone utility tax, an estimate of the impact is difficult at best. However, if the loss trend continues, Bellevue could face an additional reduction in the Telephone Utility tax base of \$0.5 to \$1 million. Conversely, it is possible that taxes are not being remitted or that companies operating in Bellevue have not been detected.

Cellular Telephone Utility Tax (\$7.7 million or 19% of utility taxes). The Forecast assumes that the growth rate has reached a plateau to a stable growth of 6% for each year of the Forecast. Historically, cellular utility tax grew at between 11% and 36% per year. Experts have estimated that Bellevue has reached a point of market saturation and should anticipate slower growth in the future.

Wastewater Utility Tax (\$2.5 million or 6% of utility taxes). Wastewater utility rate increases, associated with pass-through costs from King County, are expected to increase

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General Fund receipts by approximately \$100,000 per year through the life of the Forecast. The METRO/King County Council adopted an increase in wastewater treatment rates of 9.4% (from \$23.40 to \$25.60) per month for an equivalent residential unit. The increase in wholesale treatment costs will result in a rate increase of approximately 7.3% to Bellevue sewer customers beginning in 2005.

Water (\$2.1 million or 5%), Storm and Surface Water (\$0.9 million or 2%), and Garbage (\$2.2 million or 5%) Utilities Taxes. The Forecast assumes that these three utility taxes will continue to rise at the historical average rates of growth (an average of 2.9% to 4.6%). While no specific utility rate increase is included in the Forecast, some growth for consumption and inflationary growth is included in the Forecast.

C. Other Revenue Groups:

For the 2005-2006 biennium, other revenues are estimated to comprise 26% or \$64.3 million of all General Fund resources. While the Early Outlook includes full updates of taxes, other revenue groups will be updated as a part of the regular budget process and provided to Council with the Full Financial Forecast in September. Other revenues consists of intergovernmental, charges for services, beginning fund balance, miscellaneous, other finance sources, fines and forfeits, and licenses and permits. The following table illustrates the forecasted percentage and amount by revenue group for the 2005-2006 biennial budget.

Projected 2005-2006 Other Revenues by Type
(in \$ millions)

<u>Revenue Group</u>		
Intergovernmental	\$28.8	44.8%
Charges for Services	23.5	36.5%
Beginning Fund Balance	7.1	11.0%
Miscellaneous	2.5	3.9%
Other Finance Sources	1.4	2.2%
Fines/Forfeits	0.7	1.2%
Licenses & Permits	0.3	0.4%
Total	\$64.3	100.0%

Each revenue group is discussed below, in order of largest to smallest.

Intergovernmental Revenues (\$28.8 million or 45% of other revenues). This group includes liquor excise tax, emergency medical services (EMS), and motor vehicle fuel tax. Revenues such as motor vehicle fuel tax and liquor excise tax are expected to continue to show little growth due to low population growth. Revenue growth for regional contract services including EMS, fire services and dispatch are expected to grow an average of 3.5% for the Forecast period.

Charges for Services (\$23.5 million or 37% of other revenues). Charges for services, which include parks and recreation fees, probation charges, and interfund charges, are expected to increase modestly (0.5% to 3.7%) during the Forecast period. Culture and

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recreation fees are expected to rise at or above the rate of inflation. Interfund revenue growth remains essentially unchanged over the prior Forecast.

Beginning Fund Balance (\$7.1 million or 11% of other revenues). Beginning fund balance or resources forward, is assumed at 3% of total budget

Miscellaneous (\$2.5 million or 4% of other revenues). Investment interest is expected to increase modestly over the current rates of return as the economy continues to improve.

Other Finance Sources (\$1.4 million or 2.2% of other revenues). Includes operating transfers from Cable Franchise and Development Services. Contributions from Cable Franchise are expected to rise at the rate of inflation while other transfers are not expected to increase.

Fines and Forfeits (\$0.7 million or 1% of other revenues). Due to recent changes in the King County Court Service contract, Bellevue anticipates receiving approximately \$289,000 less per year beginning in 2005.

- **Provision of Municipal Court.** Bellevue's contract with King County expires at the end of 2006. The provision of court services remains an area of significant uncertainty for Bellevue. If the City establishes a facility for these services, initial one-time costs are estimated at between \$0.5 and \$1 million. The current Forecast assumes the current relationship will continue indefinitely and does not include initial set-up costs. The City will continue to work on resolving this major uncertainty.

Licenses and Permits (\$0.3 million or less than 1% of other revenues). Licenses and permits, which includes business registrations and concealed weapons fees, are expected to increase modestly during the Forecast period.

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Section IV: Expenditure Highlights

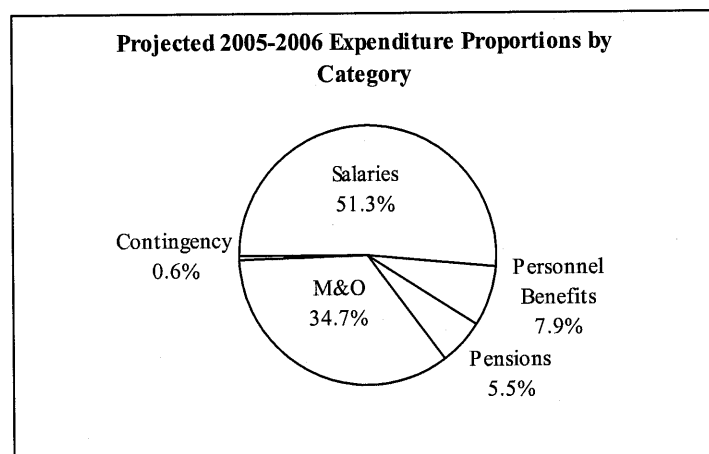
This section includes a) a general discussion of expenditures and b) a detailed discussion of major drivers.

A. Summary

Expenditure growth is expected to be 4.4% in 2005 and then decline to an average of 3.4% from 2006 through 2010. Three significant cost drivers, which account for 43% of expenditure growth in 2005, are driving the anticipated expenditure spike in 2004 including:

- Health Benefits costs
- State mandated retirement plans
- Workers' Compensation Costs

As the table illustrates below, salaries are the largest expenditure component, followed by maintenance and operating (M&O), personnel benefits, pensions, and General Fund contingency. Each expenditure group is discussed below.



Salaries (\$128.4 million or 51%). Total salary costs are expected to rise an average of 2.8% per year through the Forecast period. Current inflation projections for 2005 and 2006 (1.3% to 2.7%) are lower than the rates used for the Mid-Biennium update (2.0% to 2.7%). Lower initial inflation, coupled with the ERP (Finance and Human Resources System) staffing reductions in 2007 (see B. Major Drivers) are expected to moderate salary growth.

Maintenance and Operating (M&O) (\$86.8 million or 35%). Lower than historical average inflation is expected to temper growth in M&O expenditures. Growth is expected to average 2.4% through the Forecast period.

Personnel Benefits (\$19.8 million or 7.9%) and Pensions (\$13.8 million or 5.5%). This includes workers' compensation, health benefits, and state pensions. Costs are expected to rise substantially. A detailed discussion is included in B. Major Drivers.

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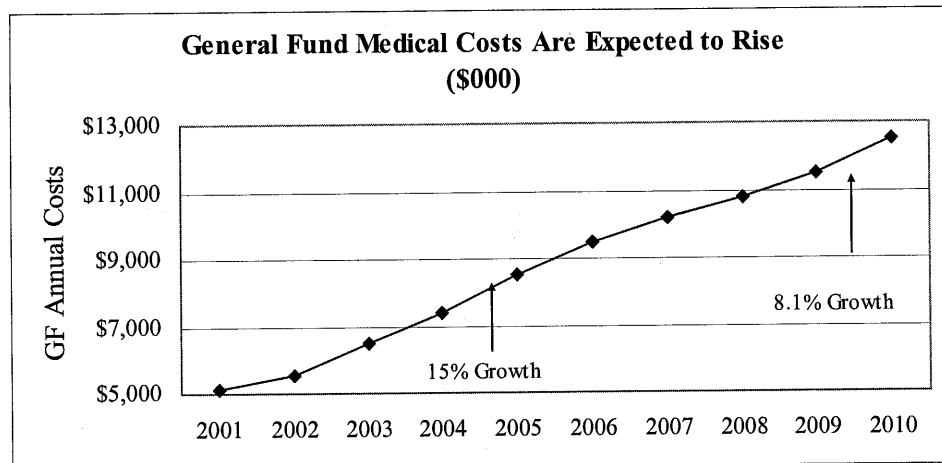
General Fund Contingency (\$1.5 million or 0.6%). Per City policy, contingency is assumed at 0.6% of total budget.

B. Major Drivers

Health Benefit Costs. Nationwide, health care costs have continued to rise dramatically. Similarly, Bellevue's health care costs have risen substantially over the past few years. The Forecast assumes significantly higher City share costs for employee health benefits. Based on our health benefits consultant's projections, City costs are expected to increase from \$8,059 per employee in 2004 (estimated), to \$9,424 per employee in 2005 (estimated). This represents a 17% cost increase. Budgeted expenditures in 2005 are expected to increase by \$1.2 million compared to 2004.

Numerous cost control measures, including higher co-payments or deductibles, setting limits for certain kinds of care, and increased premium sharing are being evaluated. The objectives of these measures are twofold: for employees to pay a larger portion of their health care costs and for employees to be more aware of costs when making health care decisions. The City currently pays 94% of the premium for LEOFF (Law Enforcement Officers and Firefighters) employees and 88% for non-LEOFF employees. These percentages may shift over time as employees pay for a share of the increase in health benefits costs.

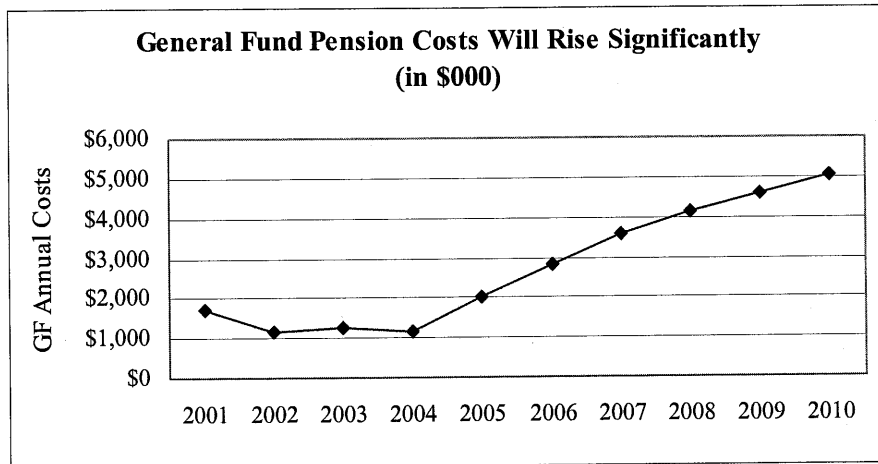
Due to this shift in employee cost sharing, the Forecast assumes that the City's growth in costs will moderate during the Forecast period from a budgeted 15% increase in 2005 to an average budgeted increase of 8.1% each year from 2006 to 2010 (see graph below). These corrective actions are expected to better match revenues with expenditures and replenish depleted reserves. Despite these measures, General Fund expenditures are expected to rise from \$5.1 million in 2001 to \$12.5 million by 2010.



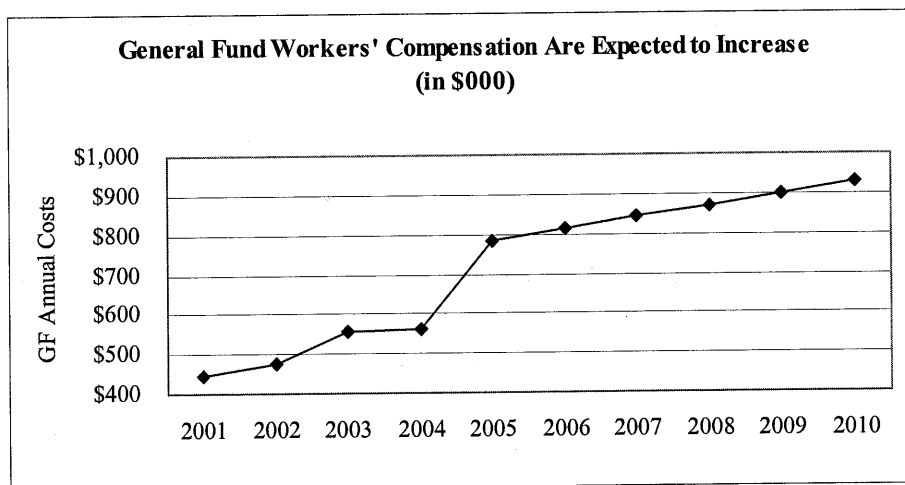
Pension Rate Increases. The State of Washington is increasing mandated retirement contributions from cities through the Forecast period. As a consequence, City retirement contributions to PERS 1, 2, and 3 and LEOFF 2 will increase significantly in 2005 and beyond (with no change to LEOFF I employer rates). General Fund contributions are expected to rise \$823,000 in 2005 and continue to rise through the Forecast period. Total

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General Fund contributions are expected to rise on average \$641,000 (28%) per year through 2010.



Workers' Compensation Costs. Over the past several years, workers' compensation benefit payments for medical, time loss and disability claims increased substantially. Based on a recent actuarial study, increased contributions are necessary to better match expenditures and resources. In addition, reserves require replenishment (based on policy and actuarial recommendation). In total, General Fund costs are expected to rise \$237,000 (41%) beginning in 2005. In 2006 through 2010 the rate of increase is expected to drop to an average of 3.6% per year. The following graph illustrates an initial spike in costs in 2005 with more modest cost increases over time.



Impact of Position Reductions Associated with the Enterprise Resource Planning System (ERP). The ERP System (New Finance/HR System) is projected to result in operational efficiencies when fully implemented. Staff has committed to a reduction of 18 positions (13 in the General Fund; 5 in other funds) by the end of 2006. The elimination of these 13

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positions in the General Fund is reflected in the Forecast. (Note: a Memory Bank item addressing staffing implications will be included in Council's three-ring binders on June 21)

Enhanced Economic Development. The Forecast includes an additional \$200,000 per year to enhance the City's economic development initiative. This plan is a supplement to current efforts and includes hiring an economic development director.

Attachment 2

2005 - 2010 Utility Funds Early Outlook

Note: The following represents the 2005-2010 Utility Funds Early Outlook. This information will be briefly covered at the June 21 Council meeting. The 2005-2006 budget issues are also included in this document to provide the Council with an overview of issues that will be presented in greater detail (e.g. dollar amounts and potential rate increases) at their June 28 meeting. These details and any new information will be highlighted in the Council materials prepared for the June 28 meeting.

Background: The Utility Funds Early Outlook represents a preliminary financial forecast. This forecast consists of projected rate increases necessary to continue current base programs and highlights key issues likely to impact budgets and rates during the forecast period. The Utilities department experiences some of the same cost pressures as the rest of the City such as increased expenditures due to higher medical costs and inflation. In addition, there are Utilities specific cost pressures due to regulatory environment or specific capital needs. Both contribute to annual cost increases and the need for annual revenue increases. The Utility Funds expenditure growth, excluding wholesale & CIP, is projected to be approximately 3.5% annually over the forecast period, similar to the expenditure growth for the General Fund. However, unlike the General Fund, Utility Funds have very little revenue growth other than through rate increases and annual rate increases are necessary to accommodate any expenditure growth.

Per Council adopted policies and best rate making practices, rates are levelized where possible, over the forecast period such that customers do not experience rate spikes due to local program cost increases.

Financial Forecast: The following table illustrates preliminary rate increases incorporated in the 2005-2010 base forecast. This base forecast does not include any new investments or impacts of future Council policy decisions. The base forecast does include budget reductions resulting from efficiencies and new revenue sources (e.g. final utility bill fees) already approved by Council. The key rate drivers are detailed below.

Water Utility

	Projected 2005	Projected 2006	Projected 2007	Projected 2008	Projected 2009	Projected 2010
Local	0.0%	0.0%	0.0%	1.6%	2.2%	2.2%
Wholesale	0.0%	0.0%	0.0%	0.0%	4.3%	4.3%
Total	0.0%	0.0%	0.0%	1.6%	6.5%	6.5%

Key Rate Drivers:

- Increased health benefit, State pension, & workers' compensation costs
- Existing capital program revised to reflect current costs & program expectations
- Increased maintenance & operations costs to existing programs

There are no rate increases in the 2005-2007 period because it is assumed that savings resulting from the new Cascade Water arrangement and operating efficiencies will be used to offset base cost increases (healthcare, capital, and M&O).

Attachment 2

Wastewater Utility

	Projected 2005	Projected 2006	Projected 2007	Projected 2008	Projected 2009	Projected 2010
Local	2.4%	1.4%	2.6%	1.7%	1.6%	1.6%
Wholesale	7.3%	0.0%	8.8%	2.0%	2.0%	2.0%
Total	9.7%	1.4%	11.4%	3.7%	3.6%	3.6%

Key Drivers:

Wholesale:

- Increased costs from King County/METRO for wastewater treatment

Local Programs:

- Increased health benefit, State pension & workers' compensation costs
- Existing capital program revised to reflect current costs & program expectations
- Increased in maintenance & operations costs for existing programs

Storm & Surface Water Utility

	Projected 2005	Projected 2006	Projected 2007	Projected 2008	Projected 2009	Projected 2010
Local	2.8%	3.3%	3.3%	3.3%	3.3%	3.3%

Key Drivers:

- Increased health benefit, State pension & workers' compensation costs
- Existing capital program revised to reflect current costs & program expectations
- Increased maintenance & operations costs to existing programs

2005-2006 BUDGET ISSUES/IMPACTS

The following represents issues that will have an impact on the 2005-2006 budget and subsequent years. The issues have been split into two categories, 1) "Issues included in the Base Forecast"; and 2) "Issues Not Included in the Base Forecast". Specific dollar and rate implications for each issue will be presented to the Council at the Utilities June 28 budget presentation.

Issues Included in the Base Forecast

King County/METRO Wastewater Treatment Costs: On March 15, Council was briefed on early projections for wastewater treatment cost increases proposed by King County, which were in the range of approximately 18-20% for 2005. Since then, the County has refined their numbers and on June 14, 2004, King County/METRO Council adopted an increase in the wastewater treatment rate of 9.4% (from \$23.40 to \$25.60) per month/equivalent residential unit. This is about half of the rate increase originally proposed by King County. The rate increase is largely driven by a decrease in commercial volumes, increased debt service costs, increases in operating costs and the need to establish a rate stabilization reserve. This increase in wholesale treatment costs will result in a rate increase of approximately 7.3% to Bellevue sewer customers. Per

Attachment 2

Council adopted financial policies, wholesale cost increases are passed through to the customer. This rate increase is incorporated in the base forecast.

Cascade Water Alliance: Effective January 1, 2004, the City of Bellevue signed a new water purchase arrangement with the Cascade Water Alliance (CWA) and relinquished its existing contract with Seattle. The new arrangement with CWA will have an impact on how Bellevue reserves for operating contingencies and on the amount of total water charges from CWA.

Reserves: The CWA currently purchases water from Seattle by way of a “take or pay” contract. This means that the CWA is contractually obligated to buy an agreed upon block of water from Seattle irrespective of how much is consumed. For this reason, the annual costs to Bellevue as a Cascade member for water purchases are largely fixed in a given year. This shifts the risk during a poor water sales year to Bellevue, since there would not be a corresponding reduction in water purchase costs when water sales are down. A recently completed cost of service study recommends moving towards a less variable rate structure as well as an increase in reserves to ensure that the City is able to pay for full water costs, even in a year when water sales are down. This shift in risk and the corresponding need for higher target reserves was anticipated and savings from the past two years have been put aside to fund the increased water reserves. A rate increase will not be necessary to fund the increased reserves.

Water rates: For 2005 – 2006 Budget, total water charges from the CWA are expected to be lower than costs previously projected for Seattle and currently budgeted in 2004. The base forecast assumes that these savings will be used to keep rates low during this forecast period.

Issues Not Included in the Base Forecast

Pavement Restoration: When repairs are made to the City’s utilities located in paved roads, the pavement must be restored. The long-standing practice has been for Bellevue Utilities to install pavement patches only slightly larger than the area of disturbance. Utilities has infrequently performed more extensive pavement restoration by “grind and overlay” when a road has been recently overlaid or when the Transportation Department specifically requested it in response to premature pavement degradation. Transportation is requesting that Utilities follow Bellevue City Code, the Transportation Design Manual requirements and the general policy of restoration by grind and overlay in all cases where the road is in good condition as determined by the Pavement Management Rating System. This policy is intended to extend the useful life of the road and is in place for all others (Franchise Utilities, Developers, private citizens, etc.) performing work in the right-of-way.

Stormwater National Pollutant Discharge Elimination (NPDES) Permit: In order to protect water quality, the federal Clean Water Act (CWA) established a requirement for municipalities to obtain a permit to discharge stormwater called the National Pollutant Discharge Elimination System (NPDES) permit. The Environmental Protection Agency (EPA) designated the Washington State Department of Ecology as the permitting authority. NPDES permits are scheduled for issuance to local jurisdictions in 2005.

Attachment 2

Once obtained, the permit assures certain management practices are in place and also provides legal protection for the municipality from 3rd party lawsuits for stormwater discharges.

Endangered Species Act (ESA): This effort would seek compliance with the Endangered Species Act for the array of municipal stormwater management activities provided by the entire City organization. Work with the National Oceanic and Atmospheric Administration (NOAA) Fisheries, the US Fish and Wildlife Service, the State of Washington, Tribes, local governments and other stakeholders would be involved.

A WRIA salmon conservation plan and Puget Sound Salmon Recovery Plan will lead to identification of projects, programs, responsibilities, timelines and funding requirements. The budgetary impact of such a plan will not be known until 2007. No funding placeholder has been included in the base forecast.

Renewal & Replacement Funding: In 1995, Council adopted policies and established accounts to fund long-term replacement of utility facilities. The policies were designed to assist with providing rate stability for generations to come. In this regard, Bellevue is very forward-looking and is in a much better position to anticipate utility facility replacement than most cities in the nation. Bellevue Utilities recently completed two studies that drew upon worldwide studies of infrastructure life and additional Bellevue system condition information to refine the assumptions used to develop the original Renewal & Replacement (R&R) plan. The engineering firm of Black & Veatch (B&V), evaluated the Utilities infrastructure condition and replacement needs. Financial Consulting Solution Group (FCSG) assisted in the funding and sensitivity analysis. These studies highlighted the following issues:

- Replacement costs for existing infrastructure are understated
Based on the Utilities construction costs in recent years as well as the experience of other Utilities, it was determined that replacement costs for existing infrastructure are understated and should be adjusted to current costs.
- R & R plan should include all utility infrastructure
The existing R & R plan only includes replacement of pipe. In order to fully reflect the true cost of current and future capital needs, the R & R plan should include all major Utility assets such as pump stations and reservoirs.
- Assets are expected to last longer
Asset lives vary depending on various attributes. Black & Veatch categorized assets into 3 “bins” and evaluated useful lives for each “bin”. Most assets were deemed to have useful lives of 75, 100, or 150 years. Previous assumption was that all pipe assets had useful life of 75 years.

The first two elements above are expected to increase R & R funding needs significantly. This increase will be mitigated somewhat by the newly developed useful lives and survival curves, which indicate that assets are expected to last longer than earlier projected.

Attachment 2

Due to the large rate base for Water & Sewer funds this is expected to have minimal impact on these funds. The impact to the Storm & Surface Water Fund is significantly more because the rate base is smaller and the current contribution from rates are being consumed by current CIP needs and very little is being contributed towards R & R.

In addition to the above adjustments to the existing R&R assumptions, the B&V study endorsed a long-term vision for significantly increasing condition assessment (i.e., cleaning and video inspection of pipe), especially for the Storm & Surface Water system, since condition of the system is largely unknown at this time. Growing the condition assessment programs would require several years and additional funding. Enhanced condition assessment may result in additional or accelerated capital needs, depending on the findings of the condition assessment programs. It is anticipated that a third-phase refinement of R&R assumptions would be carried out in another decade when condition assessment programs have reached maturity.

New Capital Projects: There are several capital projects highlighted as being high priority during this forecast period. These include infrastructure replacement projects, projects to meet capacity in the CBD area, projects to meet regulatory requirements, and projects to address flooding problems. A number of these projects will be considered for the 2005 - 2011 CIP plan.

Attachment 3

2005-2010 Development Services Fund Early Outlook

Development Outlook. After the economic downturn in 2001, development activity remained relatively flat through the end of 2003 with the exception of a high of level activity for residential additions and remodels driven by historically low interest rates. Activity is rebounding and we are projecting significant growth beginning in 2004 when several major projects are expected to apply for permits. The total number of permits and the construction valuation for issued permits are expected to increase significantly. As a result, Development Services is expecting the next two years to be the strongest years since the 2001 economic downturn.

Several factors are working to bring this turnaround. There is a growing interest for reinvestment in existing retail and office space throughout the city, confirmed by a 32% increase in valuation issued from the same time last year. The main reason for expected higher levels of activity is the scope of several extraordinarily large projects planned for 2004 and 2005. These projects include Lincoln Square, Overlake Hospital, Summit, and the New City Hall building. The impact of these projects alone is expected to create an increased workload, which could not be sustained by current staffing levels. Demand for office space is expected to increase which will result in a further reduction of office vacancy rates..

Key Drivers:

- Major projects scheduled for 2005 - 2006 along with higher volumes of small permits will result in increased building fees of \$600,000 each year. For years 2007-2010 the forecast assumes no additional extraordinary major projects revenue and holds growth relatively flat, adjusted for inflation.
- Additional staff needed in 2004 through 2007 to cover increased workload will resulting in higher costs in those years.
- Fees for Development Services are expected to increase over the forecast period, as needed to cover higher projected costs for health care, pensions, and workers comp.

Land Use Forecast. Land Use revenue is expected to exceed budget by approximately \$150,000 in 2004. The increase is due to the additional revenue from billed hours for the major projects listed above. It is important to note that Land Use will not experience as large a workload increase as the building functions because several of the large projects have already completed the bulk of land use permitting work. However, the Bellevue School District capital projects, telecommunication applications and increased demand created by client requested service enhancements (such as project management) have contributed to a steady increase in Land Use related hours.

Building Forecast. Revenue for 2005 is expected to exceed budget by 10% in both building plan review and inspection services. The first quarter 2004 results proving to be the strongest first quarter results since 2000.

The initial results from an in-depth Development Services workload analysis have just been completed. This analysis compared workload projections with current staffing

Attachment 3

levels, and was instrumental in identifying the need to add 10 additional Limited Term Employee (LTE) positions in Development Services starting in June 2004. Continual monitoring of workload will enable Development Services to respond economic demands for development services throughout the forecast period.

The following table provides a summary of the forecasted revenues and expenditures for Development Services through the forecast period 2005-2010. It is important to note that the growth and reductions in reserves for this fund follow the development cycle and it is difficult to forecast beyond 2 years. The reserves are needed to staffing costs for prepaid work and to cover core staffing requirements and fixed costs during the ups and downs of the economic cycle.

Development Services Fund 2005-2010 Financial Forecast (in \$000)						
	2005 Forecast	2006 Forecast	2007 Forecast	2008 Forecast	2009 Forecast	2010 Forecast
Beg Reserve	\$5,681	\$5,188	\$4,723	\$4,691	\$4,737	\$4,698
Resources:						
Fire, Trans, Utilities Fees	\$2,474	\$2,544	\$2,617	\$2,574	\$2,575	\$2,576
Building Fees	5,490	5,555	5,705	5,859	6,017	6,180
Land Use Fees	870	872	850	800	800	800
General Fund Subsidy	5,811	5,945	6,106	6,270	6,440	6,614
DSI Reserve Contribution	118	118	118	-	-	-
Other Revenue/Interest	164	154	144	144	145	144
Total Resources	14,927	15,188	15,540	15,647	15,977	16,313
Expenditures:						
Fire, Trans, Utilities Costs	\$2,393	\$2,448	\$2,514	\$2,582	\$2,651	\$2,723
Building	5,028	5,143	5,282	5,425	5,571	5,722
Land Use	950	972	998	1,025	1,052	1,081
Gen Fund Costs	5,811	5,945	6,106	6,270	6,440	6,614
Other	450	300	300	300	300	300
LTE Staffing Increases	688	745	373	-	-	-
Outside Contractors	100	100	-	-	-	-
Total Expenditures	\$15,419	\$15,653	\$15,572	\$15,602	\$16,015	\$16,439
Ending Reserves	\$5,188	\$4,723	\$4,691	\$4,737	\$4,698	\$4,573

Attachment 4

2005-2010 Parks Enterprise Fund Early Outlook

Introduction

The Parks Enterprise Fund accounts for the services provided by the Enterprise Program within the Parks & Community Services Department. These services include golf, tennis, aquatics, adult sports, and facility rentals. Enterprise Programs are primarily supported through user fees but attempt to serve all residents regardless of ability to pay through the use of scholarships, sponsorships and fee waivers. The Parks Enterprise Fund receives a subsidy payment from the General Fund to ensure that programs are accessible to all Bellevue residents. The following table provides a summary of forecasted revenues and expenditures from 2005 through 2010.

**Parks Enterprise Fund
2005-2010 Financial Forecast
(in \$000)**

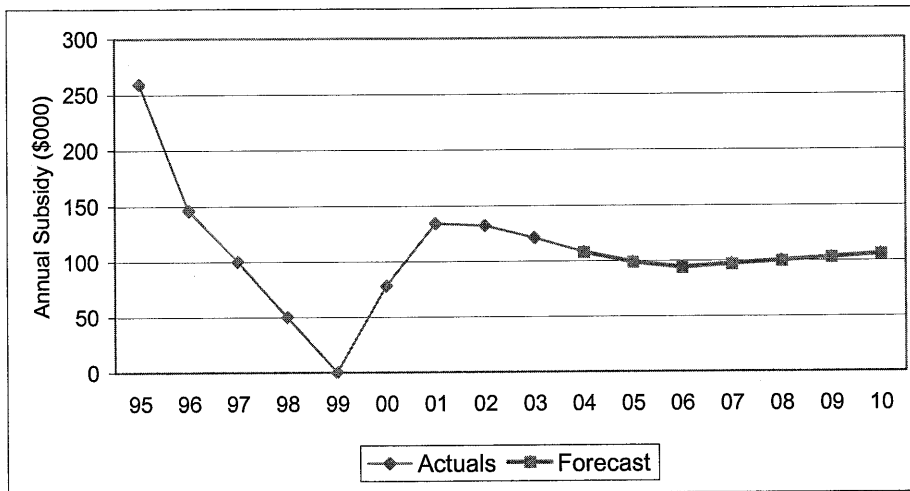
	2005 Forecast	2006 Forecast	2007 Forecast	2008 Forecast	2009 Forecast	2010 Forecast
Resources:						
Program revenues	\$4,311	\$4,499	\$4,674	\$4,840	\$5,020	\$5,186
General Fund Subsidy	99	94	97	100	103	106
Total Resources	\$4,410	\$4,593	\$4,771	\$4,940	\$5,123	\$5,292
	2005 Forecast	2006 Forecast	2007 Forecast	2008 Forecast	2009 Forecast	2010 Forecast
Expenditures:						
Personnel	\$1,897	\$1,972	\$2,050	\$2,124	\$2,207	\$2,292
M&O	813	833	855	876	898	920
Other	1,097	1,161	1,224	1,260	1,328	1,367
Total Expenditures	\$4,410	\$4,593	\$4,771	\$4,940	\$5,123	\$5,292
Reserves	\$603	\$627	\$642	\$680	\$690	\$713

Attachment 4

Parks Enterprise Fund Subsidy

- The forecast shows that the Parks Enterprise Fund can continue to make progress in reducing the General Fund Subsidy to about \$100,000 per year.

The graph below shows the actual and forecasted subsidy payment from the General Fund:



Notes: (1) Between 1997 and 1999, the Parks Enterprise Fund received an annual payment of \$140,000 from King County to offset a portion of the operating costs associated with the Bellevue Aquatic Center. (2) Starting in 2001, the subsidy includes an adjustment for the impact of the benefited employee rule changes.

The Aquatic Center continues to be the main driver behind the need for a General Fund Subsidy throughout the forecast period. Due to the nature of the Aquatic Center programs and facility clientele, the majority of services provided at this facility are not "Full Cost Recovery" services. Most of these services recover only the direct program costs in an effort to provide affordable and accessible programs to youth and physically challenged participants. In addition to the General Fund subsidy, approximately \$350,000 - \$400,000 of other Parks Enterprise Fund revenues are needed to support the Aquatic Center operation each year. Overall, this level of subsidy is consistent with the financial performance that was anticipated in 1995 when the City took over the pool.

Parks Enterprise Fund Reserves

Parks Enterprise Fund reserves will be managed within the targeted reserve level of roughly \$575,000 to \$700,000 over the forecast period. The targeted reserve level is set at two months operating expenses.

Attachment 4

Enterprise Capital Improvements

The Parks Enterprise Fund supports the Enterprise Facility Improvements Project (CIP project P-R-2), including capital projects at the Bellevue Golf Course. In 1999, the City acquired the 2.79-acre Miller Property primarily to protect the golf course maintenance facility hours of operations from residential development directly adjacent to the maintenance facility. Reduction in maintenance hours would have resulted in a loss of playable hours and significantly impacted golf course revenues. The City committed to using the Enterprise CIP fund and golf course greens fees to purchase the property for \$800,000. A cash down-payment of \$100,000 was paid at closing, and a \$700,000 balloon payment is due in September 2004. The contract allows the City up to six months (or until March 2005) to secure financing for this balloon payment.

While protecting the viability of the golf course operations remains an important objective for the Enterprise Fund, this objective can be achieved without retaining the entire Miller property. Based on a preliminary market appraisal of this property, staff believes that the City can continue to preserve the maintenance operations by either retaining a portion of the site as a buffer or by selling the entire Miller property subject to deed restrictions. The sale proceeds would be used to re-pay the balloon. This approach will continue to protect golf course operations and allow for the continued capital investment in the Bellevue Golf Course. Staff is analyzing options for Council review and consideration later this year.

Budget Assumptions and Issues

Below are some of the major assumptions used in developing the early outlook 2005-2010 forecast:

- Parks Enterprise Fund revenues are assumed to increase at the same rate as expenditures from 2005-2010, or roughly 4.0% per year.
- City Council will be discussing pricing and resident/non-resident access policies as part of the Recreation Program Plan Update. While this could impact the pricing strategy and customer base for Enterprise Programs, no fundamental policy changes have been incorporated into this forecast update.
- The Parks Enterprise CIP includes \$700,000 for both the balloon payment and the sales proceeds for the Miller property in 2005.
- The transfer of former King County pools and the development of regional aquatic facilities in Renton and Federal Way could have an unknown operating and fiscal impact on the Bellevue Aquatic Center that were not factored into this forecast.
- No new programs or investment proposals were included in this forecast. This forecast will be further refined this fall to include additional adjustments that arise through the 2005-2006 budget development process.

CITY COUNCIL STUDY SESSION ITEM

SUBJECT

Update on new solid waste contract implementation.

STAFF CONTACT

Brad Miyake, 452-4895
Damon Diessner, 452-4480

POLICY ISSUES

This update will provide Council with information regarding the implementation status of the new solid waste contract. Services under the contract are scheduled to begin on June 28, 2004. In addition, the selected contractor, Rabanco, will be present to provide Council with information and respond to questions.

DIRECTION NEEDED FROM COUNCIL

☐ Action
☒ Discussion
☒ Information

This is an informational update; no Council decision is requested.

BACKGROUND/ANALYSIS

Council authorized the City Manager to execute a new solid waste contract with Rabanco on November 3, 2003. In December, 2003 Council authorized an amendment to delay the start date of the new contract from April 1, 2004 to June 28, 2004 in order to allow adequate time for Rabanco to purchase new equipment and prepare for implementation. As part of the contract change, Rabanco agreed to begin weekly yard waste service, a doubling of the existing service, at no additional cost on April 1, 2004 due to the fact that no additional equipment was required to make the change.

The rest of the new garbage and recycling services will go into effect on June 28, 2004. Staff will be present at the June 21st meeting to provide more details regarding the new services, the implementation status, the commercial food waste pilot project and the overall savings the City and customers can expect.

Rabanco will also be present at the June 21st meeting to answer any questions.

ATTACHMENT

Attachment A - Rabanco Letter Dated June 1, 2004



RABANCO

1600 - 127th Avenue NE
Bellevue, WA 98005

June 1, 2004

Mr. Damon Diessner
Assistant Utilities Director
City of Bellevue
P.O. Box 90012
Bellevue, WA. 98009

Dear Damon:

We are now in the final month preceding our implementation of the new solid waste and recycling services and I wanted to report that we are on schedule and that we have our eye firmly on the target. Your staff has provided tremendous support and guidance throughout the planning process leading up to this point and they have been especially helpful in the development of the new web-site and the new out-reach materials.

As you know the new contract provides substantial rate benefits to Bellevue customers. We are pleased to be able to roll out the new and enhanced services at these lower rates

Should the City Council wish to get an update on the new contract implementation or any other solid waste issues, we would be pleased to provide same at the Council's convenience.

Sincerely;

A handwritten signature in black ink, appearing to read 'Wes Smith', with a stylized flourish at the end.

Wes Smith
General Manager

cc: Jeff West, Nels Johnson



CITY COUNCIL STUDY SESSION ITEM

SUBJECT

Overview of Bellevue's Deferred Compensation Program, Internal Revenue Code (IRC) Section 457 (IRC Section 457 Plan) and a discussion of the selection process and recommendation to contract with Great West Retirement Services (Great West) as the Plan administrator.

STAFF CONTACT

Ed Oberg, Deputy City Manager 452-4096

Yvonne Tate, Human Resources Director, 452-4066

Jill David, Retirement Services Manager, 452-7676

POLICY ISSUES

The Bellevue Section 457 Plan Committee (457 Plan Committee) has engaged in a competitive selection process for an Administrator for the IRC Section 457 Deferred Compensation program. The 457 Plan Committee has chosen Great West, absent other information or concerns raised by Council. To carry out this action, Council will later be asked to amend and restate the City of Bellevue Section 457 Umbrella Plan Document (Umbrella Plan) to reflect Great West as the Plan administrator and to adopt the Great West Plan.

DIRECTION NEEDED FROM COUNCIL

☐ Action
☒ Discussion
☐ Information

Unless alternative direction is provided, staff will negotiate with Great West and will then request Council approval to amend and restate the City of Bellevue Section 457 Umbrella Plan Document (Umbrella Plan) to reflect Great West as the Plan administrator and to adopt the Great West Plan.

BACKGROUND

The City of Bellevue has offered an optional Deferred Compensation retirement savings program to its benefited employees and Council for over 20 years. This program is defined under Section 457 of the Internal Revenue Code and provides a way for employees to save for retirement on a pre-tax basis. Section 457 Plans are common among government employers – all 50 states have Section 457 Plans in place, and they are widely used by local governments.

Participation is voluntary and the City does not match the employee contributions. About 600 participants (450 current employees) have approximately \$22 million invested in this voluntary program. The average account balance is about \$40,000 and the average monthly contribution is \$400. Section 457 Plan Administrators are not paid by the City. They are paid from revenue paid to the vendor by the underlying investments in the 457 Plan and by asset-based administration fees charged to participant accounts.

The City currently contracts with ICMA Retirement Corporation (ICMA-RC) and Nationwide Retirement Solutions (Nationwide) for the administration of the IRC Section 457 Deferred

Compensation Program. The ICMA-RC agreement has been in place for over 20 years and the Nationwide agreement has been in place 8 years. Currently, ICMA-RC administers approximately \$20 million and Nationwide administers approximately \$2 million of participants retirement investments.

Following the financial issues associated with Orange County, CA., Congress adopted legislation in 1996 requiring that IRC Section 457 investments be held in trust beginning in 1999. Prior to this time, employers, including the City of Bellevue, held the assets of IRC Section 457 investments. This Congressional action requiring the investments be held in trust heightened the awareness of employer's fiduciary responsibilities and the need to provide oversight of such programs.

In November 2001 the Bellevue City Council adopted the City of Bellevue Section 457 Umbrella Plan (Umbrella Plan) to clarify administration of the ICMA-RC and Nationwide Plans, to focus fiduciary responsibilities and functions on the Plan and Trust Committee to administer the plans. A copy of the Umbrella Plan has been provided as Attachment 3 for reference. Currently, the Umbrella Plan ties together the ICMA-RC and Nationwide Plan documents. Also, the Umbrella Plan assigns the Committee many fiduciary responsibilities in §6.5, among them the power "to engage services of agents whom it may deem advisable to assist it with the performance of its duties". In addition, the Umbrella Plan § 9.2 provides that "the Employer (Council) reserves the right to modify or amend the provisions of this Plan at any time." As such, the Council will be asked to modify the Umbrella Plan to replace the multiple-provider format and adopt a single plan with a single Administrator, and single set of investment options.

Through §6.1 of the Umbrella Plan, the Council named the Municipal Employees Benefit Trust (MEBT) Bellevue Retirement Plan Committee members (who are appointed by the City Manager) as the Bellevue Section 457 Plan Committee. Current members appointed by the City Manager are: Ed Oberg, Deputy City Manager- CMO; John Backman, Regional Information Technology Manager - ITD; Doran Beauclair, Traffic Signal Project Manager/Inspector, Transportation; Mike Eisner, Deputy Fire Chief Fire Department; and Randy Holmes, Streets/Surface Water Operations Manager.

The Section 457 Plan Committee's role with respect to the Section 457 Plans continues to evolve based on Trust Law. By offering participation in a Section 457 Plan, the Section 457 Plan Committee should:

- 1) periodically test the market for administrators and other service providers to show due diligence in selecting and monitoring its vendors;
- 2) work with an Investment Advisor to develop an Investment Policy and to select and monitor the investment options to participants based on the Investment Policy;
- 3) minimize costs to participants; and
- 4) provide participant education.

Through these actions, the Section 457 Plan Committee carry out their due diligence and their fiduciary responsibilities. As roles have evolved, this more active oversight (fundamentally selection and monitoring) involves estimated annual costs of \$30,000 for Investment advice and \$10,000 for Legal advice. The proposed contract with Great West will provide offsetting revenue to the City to fully cover these costs.

In 2002, the City's Section 457 Plan Committee commissioned a review of the Deferred Compensation program to evaluate best practices. PRIME Asset Consulting (PRIME), a

component of UBS PaineWebber, performed the study. The study made 10 recommendations (Attachment 1) including establishing a written investment policy statement, hiring an expert to help the Committee monitor fund performance, hiring one Recordkeeper for the plan, and reducing participant fees. These recommendations are consistent with Department of Labor guidelines.

Based on the PRIME study, the Committee appointed an employee Taskforce that issued an employee survey and the RFP. Ten vendors responded and four were interviewed. Two finalists, Great West and ICMA-Retirement Corporation (ICMA-RC) were asked clarifying questions.

Great West was chosen because they best met the objectives of the RFP (Attachment 2) and will provide enhanced services at a lower cost to the City and the participants. Additionally, Great West has a Bellevue office for convenient access.

If approved, this contract is estimated to save participants up to \$50,000 in the first year and potentially substantially more in subsequent years. The City will receive revenue sharing from Great West for investment earnings to offset its consultant fees for legal and investment advisory services. Under the proposed Great West Contract:

- The contract provides Great West 0.25% of the value of the assets each year (or approximately \$55,000 on \$22 million in current assets). Great West will retain this amount from the revenue paid by the investments in the Section 457 Plan and from participant fees.
- The City will receive approximately \$60,000 in the first year from Great West and approximately \$45,000 in subsequent years to offset consultant fees for legal and investment advisory fees ("start-up fees" in the first year are expected to be higher than fees in subsequent years). This will be paid by Great West from the revenue paid by the investments in the Section 457 Plan and from Participant fees.
- Great West would enter into a five (5) year agreement for the purpose of administering the City's elective 457 Plan.

Under the existing contracts with ICMA-RC and Nationwide (based on approximate Plan assets of \$22 million):

- The current administrators receive approximately \$88,000 in annual revenue from revenue paid by the investments and \$73,000 from participant fees;
- The City receives no revenue sharing from ICMA-RC and Nationwide to offset expenses; and
- Participants pay approximately \$73,000 in administrative fees.

Unless alternative direction is provided, staff will negotiate the Great West contract and Plan. This process will require staff time and start-up costs of approximately \$15,000 for legal advice and investment advice. These costs will be recovered through revenue sharing from Great West.

ATTACHMENTS

- 1) Executive Summary from the PRIME Asset Consulting, UBS PaineWebber study
- 2) RFP Objectives and Selection Process
- 3) City of Bellevue Section 457 Umbrella Plan Document

PRIME Asset Consulting - UBS Study

Entire Report Summary

The expenses and fees paid by the City of Bellevue 457 Plan participants are too high. Implementing one or many changes to the plan can reduce fees. It is our opinion that you should limit your plan provider to one, if not utilize an unbundled approach. We also feel that you currently have too many investment choices for plan participants. Many overlap one another making it difficult for plan participants to build optimum portfolios for themselves based upon their unique risk/return profiles. It is more difficult to provide effective investment education to plan participants with your current plan structure. Plan governance becomes much more difficult with the large number of investment options you currently have.

Recommendations:

1. Establish a written investment policy statement for the plan. Minimum elements of the investment policy statement should include a statement of philosophy and responsibilities, designate asset classes to be included in the plan, assign appropriate asset class benchmarks to measure active manager performance, establish investment manager hiring & performance requirements, spell out specific manager replacement guidelines, determine any specific plan committee guidance which is desired by the sponsor.
2. Continue to maintain a plan committee for plan governance purposes. The committee would review participant investment option performance & make recommendations for manager changes when appropriate. The committee could also function in an administrative oversight role for the plan sponsor if desired.
3. Establish written administrative policies for the plan if they do not currently exist. These policies guide employee benefits staff & assist them in answering participant questions consistently & in administering the provisions of the plan document. Such a document helps the sponsor with plan governance.
4. Select, monitor and replace mutual funds offered at the City of Bellevue 457 Plan Committee level by conducting quarterly Committee Meetings. This can help reduce mutual fund expenses and will also expedite the decision-making process and dissemination of changes to participants in a timely manner.
5. Use one record keeper/administrator for the plan.
6. Hire a third party consultant to assist you with your investment policy, plan design and provider searches (including the plan's investment options). You may decide to retain the third party consultant to assist with ongoing performance evaluation & reporting to the committee.
7. Renegotiate your contract with Nationwide & ICMA-RC to reduce fees & enhance provisions. We have talked with both firms on your behalf, and both are very willing to negotiate with the City of Bellevue.

8. Restructure your current participant investment options. Reduce the number of funds to 10-15. Offer the distinct asset classes to your participants, as well as lifestyle model funds.
9. Also consider offering lifestyle (fund of funds) funds: such as conservative, moderate & aggressive funds. You may be able to build these funds from your asset class offerings if your record keeper has this capability. This would make governance & participant education easier for the sponsor.
10. Consider establishing a formal participant investment/retirement education program (similar to the recent education campaign just completed this summer) to help your plan participants learn to become long-term retirement investors rather than just savers. It is our experience that participation rates & average contribution percentages increase significantly with these types of programs in place.

Attachment 2

RFP Objectives and Selection Process

Consistent with City contracting policy, the Section 457 Plan and Trust Committee (Committee) began a competitive process for 457 vendor services. The Committee directed that an advisory Taskforce be established comprised of two committee members plus five 457 Plan participants. The Taskforce conducted an employee survey. Among the responses, 79% of the survey respondents said they would support changing the vendor if it would reduce their fees.

The Taskforce established the following selection criteria:

- Decrease the overall Plan fees – preferably with no administrative fees for participants;
- Develop a revenue sharing capability to offset investment consultant fees, legal fees and other Plan related fees;
- Upgrade the level of educational services;
- Enhance the one-on-one participant meetings with vendor representatives by including multiple locations, being responsive to a variety of work shifts and being available quarterly or more frequently;
- Streamline the fund choices with selection and monitoring of about 10-15 funds and lifestyle options by the 457 Plan Committee and making available a Mutual Fund window capability available for additional investments;
- Deliver exceptional customer service;
- Assure compliance with applicable laws and regulations;
- Provide a full complement of customer services including access to current technology; and
- Accomplish a July 1, 2004 conversion date.

Next, the Taskforce distributed an RFP and received ten responses. Based on selection criteria in the RFP, four firms were interviewed (ICMA-RC, Great West, ING and Security Benefit). Two finalists were selected, ICMA-RC and Great West who best met the selection criteria. After a number of clarifying questions, the Taskforce recommended Great West to the Section 457 Plan Committee because of its:

- Competitive fees and expenses
- Enhanced education and one-on-one meetings
- Greater involvement with Plan Administration
- Bellevue location
- Plan Sponsor support

CITY OF BELLEVUE SECTION 457

UMBRELLA PLAN

Attachment 3
CITY OF BELLEVUE SECTION 457
UMBRELLA PLAN DOCUMENT

The City of Bellevue, a city in the state of Washington (the "Employer") establishes this Internal Revenue Code Section 457 (Section 457) Umbrella Plan Document ("Plan") for the benefit of its eligible employees.

PURPOSE AND LEGAL EFFECT

The Employer maintains Section 457 deferred compensation plans via several plan documents and investment vehicles. Currently, benefits are provided under plans with two separate providers, Nationwide and ICMA Retirement Corporation. The Employer establishes this employee Section 457 Umbrella Plan Document as a master document to tie together its various Section 457 deferred compensation plans and trusts and to clarify the administration of the plans. This document is not intended to satisfy the requirements of Code Section 457 by itself, but only via incorporation of the Component Plans.

ARTICLE 2
NAME OF PLAN

2.1. Name of Plan. This Plan shall be known as the City of Bellevue Section 457 Umbrella Plan.

2.2. Effective Date. The effective date of this Plan shall be November 5, 2001.

2.3. Exclusive Benefit. This Plan shall at all times be operated for the exclusive benefit of Participants and their beneficiaries.

2.4. Plan Provisions Controlling. Except as specifically set forth otherwise, in the event the terms or provisions of any Component Plan, summary or description of this Plan or of any other instrument are interpreted as being in conflict with the provisions of this Plan, the provisions of this Plan shall be controlling.

ARTICLE 3
DEFINITIONS

The following words and phrases shall have the meanings indicated unless the context requires another meaning.

3.1. **Administrator or Plan Administrator** means the Plan Committee as defined in Section 6.1 who shall administer this Plan as further set forth in Article 6.

3.2. **Agent for Service of Legal Process** concerning this Plan shall be the City Attorney.

3.3. **Annuity Contract** means any annuity contract issued by an Insurance Company which contract is purchased or maintained at the direction of the Plan Committee.

3.4. **Component Plans** means the separate plan(s) and trust(s) the Employer maintains for the benefit of the Employees providing Section 457 deferred compensation benefits, which plans are set forth on Exhibit A and attached as Appendices. The exact terms of the plans described on Exhibit A and benefits available are set forth in those plans attached as Appendices. By this reference, those plans are incorporated as part of this Plan. The Employer may substitute, add, subtract or revise the menu of plans and/or benefits, terms and conditions at any time. Any such changes shall automatically be incorporated by reference under this Plan.

3.5. **Employee** means a "benefited employee" as that term is defined in the Employer's Human Resources Code (Chapter 3.79) as currently stated and as may be amended and any member of the City Council of the Employer. All other classifications are not eligible to participate. An Employee does not include any person identified by the Employer as an independent contractor or temporary agency employee even if the Employer, any governmental agency or court later reclassifies that person as an employee.

3.6. **Employer** means the City of Bellevue, Washington, a municipal corporation.

3.7. **Insurance Company or Insurance Carrier** means an insurance company licensed to do business in the State of Washington.

3.8. **Participant** means a person who has met the eligibility requirements of Article 4 of this Plan.

3.9. **Plan** means this City of Bellevue Section 457 Umbrella Plan and Trust as it now exists or may from time to time be amended.

3.10. **Plan Committee** means the group of individuals appointed as such pursuant to Section 6.1 of this Agreement.

3.11. **Plan Year** means the twelve-month period ending December 31.

3.12. **Trustee** shall be the Trust Committee, which is the same body as the Plan Committee and is appointed in the same manner as set forth in Section 7.1.

ARTICLE 4
ELIGIBILITY AND PARTICIPATION

4.1. Eligibility and Participation. Every Employee shall be eligible to and shall commence participation in this Plan on the date upon which that Employee satisfies the participation requirements of the particular Component Plan listed on Exhibit A in which the Employee chooses to participate.

4.2. Enrollment and Deferrals. Employees may elect to participate by completing a form provided by the Employer. Deferral amounts and changes in the deferral amounts are permitted as set forth in the applicable Component Plan.

4.3. Termination of Participation. A Participant's participation in this Plan automatically terminates on the earliest of the following dates:

- (a) The date on which the Employee terminates employment with the Employer; or
- (b) The date this Plan is terminated by the Employer pursuant to Article 10; or
- (c) The date the Participant ceases to be an Employee eligible to participate under Section 4.1.

4.4. Participation Following Termination. After termination of participation in this Plan, an Employee's recommencement of participation will become effective on the date upon which the Employee satisfies the requirements in Section 4.1, above.

ARTICLE 5
BENEFIT OPTIONS AND INVESTMENTS

5.1. Benefit Options and Investments Provided Under Component Plans and Annuity Contracts. The details of benefit and investment options to a qualified Participant are provided by the Component Plans set forth on Exhibit A. Except as otherwise set forth herein, the types and amounts of benefits available under the Component Plan, the terms and conditions of deferrals, investments, distributions and benefits are set forth in the Component Plan document.

ARTICLE 6
ADMINISTRATION

6.1. Plan Committee. The City Manager of the Employer shall appoint a Plan Committee consisting of five (5) members who shall hold office for a period of five (5) years from the date of appointment. Any member may be re-appointed for additional terms. Upon the

expiration of a member's initial five (5) year term, the member shall continue to hold office for additional one (1) year terms until a successor is appointed by the City Manager. Any Committee member may be removed by the City Manager of the Employer for cause or upon the recommendation of a majority of the remaining Committee members. Any member of the Committee may resign by notice in writing filed with the Trustee and with the City Manager of the Employer. Any vacancy shall be promptly filled by the City Manager of the Employer and shall be for the unexpired term of office, if applicable. Any vacancies unfilled for ninety (90) days may be filled by majority vote of the remaining members of the Committee.

The Plan Committee shall be the same members and shall serve the same terms as the Plan Committee of the City of Bellevue Employees' Retirement Benefit Plan. It is intended that the Plan Committee will also be the Trust Committee (or Trustees). (See Section 7.1.)

6.2. Officers and Duties. The Plan Committee shall choose from among its members a Chairperson and a Secretary. The Secretary will keep minutes of the Committee's proceedings and all dates, records and documents pertaining to the Committee's supervision of the Plan. The Committee may adopt rules for the conduct of its meetings. The Committee may employ, and suitably compensate, such attorneys, actuaries and physicians and advisory, clerical or other employees or independent contractors as it may deem necessary to the performance of its duties. The Committee may delegate all or part of its duties to one or more agents. The Committee may consult with and rely upon advice of counsel, who may be counsel for Employer.

6.3. Decision-Making Procedure. A majority of members shall constitute a quorum. No action shall be taken except at a meeting at which a quorum is present. All actions of the Committee must be approved by a majority of the entire membership of the Committee. Any meeting will require a quorum to act. Either the Chairman or the Secretary may execute any certificate or other written direction on behalf of the Committee. A member of the Committee shall not vote on any question relating exclusively to himself; in the determination of any such question, the decision of a majority of the remaining members of the Committee shall govern. The members of the Committee shall serve without bond and without compensation for their services as such.

6.4. Limits of Liability. No member of the Committee shall be liable for any act or omission of any other member of the Committee, nor for any act or omission on his own part, except his own willful misconduct. The Employer shall indemnify and save harmless each member of the Committee from any and all liabilities arising out of his membership on the Committee, except liabilities arising out of his own willful misconduct.

6.5. Powers of Committee. The Committee shall administer and enforce the Plan in accordance with its terms and shall have all the powers convenient or necessary to accomplish that purpose, including, but not limited to, the following powers:

- (a) To determine all questions relating to the rights to benefits of Participants or of the eligibility of employees to become Participants and the value of a Participant's account;

- (b) To certify to the Trustee the fact of retirement, death, termination of employment or of participation of any Participant;
- (c) To interpret, construe and enforce the terms of the Plan and the rules and regulations it adopts, including interpretation of the Plan documents and documents related to the Plan's operation;
- (d) To adopt rules of procedure and regulations necessary for the administration of the Plan provided the rules are not inconsistent with the terms of this Plan;
- (e) To engage the services of agents whom it may deem advisable to assist it with the performance of its duties;
- (f) To adopt amendments to the Plan on behalf of the Employer (without the approval of any other body); provided, such power of adoption is limited to amendments which in the opinion of the Plan Committee (1) are necessary to either (A) maintain the Plan and/or the Trust in tax qualified status under the Internal Revenue Code Section 457, 501(a) as amended, and any other relevant Internal Revenue Code Section, or (B) to conform to any other law; and (2) which do not increase the Employer's contributions under this Plan;
- (g) To direct the Trustee with respect to the crediting and distribution of the Trust;
- (h) To review and render decisions respecting a claim for (or denial of a claim for) a benefit under the Plan and to establish a claims procedure for Participants and their Beneficiaries, if necessary;
- (i) To establish a policy in making distributions for unforeseeable emergencies, if applicable;
- (j) To furnish the Employer with information which the Employer may require for tax or other purposes;
- (k) To comply with the reporting and disclosure rules, if any, applicable to the Plan.

All decisions of the Plan Committee in matters properly coming before it according to the terms of this Plan, and all actions taken by the Plan Committee in the proper exercise of its administrative powers, duties and responsibilities, will be final and binding upon all Employees, Participants and Beneficiaries and upon any person having or claiming any rights or interest in this Plan unless it can be shown that the decision, action, interpretation or determination was arbitrary and capricious. The Employer and the Plan Committee will make and receive any reports and information, and retain any records necessary or appropriate to the administration of this Plan or to the performance of duties hereunder, or satisfying any requirements imposed by law. In the performance of its duties, the Plan Committee will be entitled to rely on information

furnished by an employee, Participant or Beneficiary or by the Employer or Trustee.

6.6. Transmittal of Information. To enable the Committee to perform its functions, the Employer shall supply full and timely information concerning the compensation of Participants, their retirement, death, disability, termination of employment or of participation, and such other pertinent facts as the Committee may require. The Committee shall make available to Participants and any other persons entitled to benefits under this Plan for examination during reasonable business hours such records as pertain to the person wishing to examine the same. The Committee shall advise the Trustee of such facts as may be pertinent to the Trustee's administration of the Trust.

6.7. Expenses of Administration. The costs of carrying out the Plan will be borne by those participating through reasonable fees agreed to by the Plan Committee for administrative, record-keeping, investment and other services performed and for appropriate expenses incurred. The Participant's deferred amounts will be subject to fees charged by the Employer, its custodian, its independent Trustee, if any, or the Plan record-keeper for the administrative costs and expenses of the Plan. The administrative fees charged to the Participants may include the costs and expenses of services rendered by a third party administrator, custodian, record-keeper, or services rendered by a professional investment advisor, accountant, or legal counsel. A fee may take the form of an assessment calculated as a percentage of the current value of the Participant's account, a deduction measured by a payment or transaction, and/or a fixed charge for a service, among other reasonable methods. The Plan Committee may direct the Trustee to allocate fees and expenses for administration incurred pursuant to Section 7.5 as a charge against all participant accounts on a pro rata basis.

6.8. Accounts. An account will be kept for everyone who participates in the Plan. Like all others, the Participant's account will be credited with a sum equal to the amounts deferred from the Participant's salary or wages; it will be adjusted to reflect the current market performance of the Participant's investment selection(s); and the Participant's account will be reduced by fees charged to the Participant's account as authorized by Section 6.7 or emergency withdrawals under Section 6.5(i). The adjustment will reflect interest, dividends, and other distributions received; gains or losses from market fluctuations; investment losses; and/or any default by an investment underwriter, each if and when occurring, and, if applicable, a withdrawal ("surrender") fee. The current value of the Participant's account will determine the amount of benefits paid under the Plan.

6.9. Deposit of Deferrals into Trust and Time Lag. Transfers to the Trust will be made within a period that is not longer than is reasonable for the proper administration of the accounts of participants.

6.10. Annual Account Report. The Participant will be given a written report of the current value of the Participant's account at least annually. Unless the Participant takes exception to the information supplied, the Participant's annual statement will establish the current value of the Participant's account as of the account date.

6.11. Access to Plan Records. Upon reasonable notice the Participant may inspect records maintained for the Plan generally by the Employer or a Plan administrator and the Participant's account during normal business hours.

ARTICLE 7

TRUST PROVISIONS

7.1. Acceptance and Trust Committee. The Trustee accepts the Trust created under the Plan (or any Component Plan) and agrees to perform the obligations imposed. The Trustee agrees to hold the Trust Fund in trust for the exclusive benefit of the Participants and their Beneficiaries in accordance with the provisions of this Plan and Trust.

The Trustee shall be the Trust Committee, which is the same body as the Plan Committee and is appointed in the same manner as set forth in Section 6.1. The same persons shall serve as the Chair and Secretary of the Plan and Trust Committee. Members of the Trust Committee shall serve without bond and without compensation for their services as such.

7.2. Receipt of Contributions. The Trustee is accountable to the Employer for the funds contributed to it by the Employees of the Employer, but does not have any duty to see that the contributions received comply with the provisions of the Plan. The Trustee is not obliged to collect any contributions from the Employer, nor is obliged to assure that funds deposited with it are deposited according to the provisions of the Plan.

7.3. Investment Powers.

(a) **Trustee Powers.** The Trustee has full discretion and authority with regard to the investment of the Trust Fund, except with respect to a Plan asset under the control or direction of a properly appointed Investment Manager or with respect to a Plan asset properly subject to Employer, Participant or Plan Committee direction of investment. The Trustee must coordinate its investment policy with Plan financial needs as communicated to it by the Plan Committee. The Trustee is authorized and empowered, but not by way of limitation, with the following powers, rights and duties:

- (1) To invest any part or all of the Trust Fund in any common or preferred stocks, open-end or closed-end mutual funds, put and call options traded on a national exchange, United States retirement plan bonds, corporate bonds, debentures, convertible debentures, commercial paper, U.S. Treasury bills, U.S. Treasury notes and other direct or indirect obligations of the United States Government or its agencies, improved or unimproved real estate situated in the United States, limited partnerships, insurance contracts of any type, mortgages, notes or other property of any kind, real or personal, to buy or sell options on common stock on a nationally recognized exchange with or without holding the underlying common

stock, to buy and sell commodities, commodity options and contracts for the future delivery of commodities, and to make any other investments the Trustee deems appropriate, as a prudent man would do under like circumstances with due regard for the purposes of this Plan. Any investment made or retained by the Trustee in good faith is proper but must be of a kind constituting a diversification considered by law suitable for trust investments.

- (2) To retain in cash so much of the Trust Fund as it may deem advisable to satisfy liquidity needs of the Plan and to deposit any cash held in the Trust Fund in a bank account at reasonable interest.
- (3) To invest, if the Trustee is a bank or similar financial institution supervised by the United States or by a State, in any type of deposit of the Trustee (or of a bank related to the Trustee within the meaning of Code § 414(b)) at a reasonable rate of interest or in a common trust fund, as described in Code § 584, or in a collective investment fund, the provisions of which govern the investment of such assets and which the Plan incorporates by this reference, which the Trustee (or its affiliate, as defined in Code § 1504) maintains exclusively for the collective investment of money contributed by the bank (or the affiliate) in its capacity as trustee and which conforms to the rules of the Comptroller of the Currency.
- (4) To manage, sell, contract to sell, grant options to purchase, convey, exchange, transfer, abandon, improve, repair, insure, lease for any term even though commencing in the future or extending beyond the term of the Trust, and otherwise deal with all property, real or personal, in such manner, for such considerations and on such terms and conditions as the Trustee decides.
- (5) To credit and distribute the Trust as directed by the Plan Committee. The Trustee is not obliged to inquire as to whether any payee or distributee is entitled to any payment or whether the distribution is proper or within the terms of the Plan, or as to the manner of making any payment or distribution. The Trustee is accountable only to the Plan Committee for any payment or distribution made by it in good faith on the order or direction of the Plan Committee.
- (6) To borrow money, to assume indebtedness, extend mortgages and encumber by mortgage or pledge.
- (7) To compromise, contest, arbitrate or abandon claims and demands, in its discretion.
- (8) To have with respect to the Trust all of the rights of an individual owner,

including the power to give proxies, to participate in any voting trusts, mergers, consolidations or liquidations, and to exercise or sell stock subscriptions or conversion rights.

- (9) To hold any securities or other property in the name of the Trustee or its nominee, with depositories or agent depositories or in another form as it may deem best, with or without disclosing the trust relationship.
- (10) To perform any and all other acts in its judgment necessary or appropriate for the proper and advantageous management, investment and distribution of the Trust.
- (11) To retain any funds or property subject to any dispute without liability for the payment of interest, and to decline to make payment or delivery of the funds or property until final adjudication is made by a court of competent jurisdiction.
- (12) To file all tax returns required of the Trustee.
- (13) To furnish to the Employer and the Plan Committee an annual statement of account showing the condition of the Trust Fund and all investments, receipts, disbursements and other transactions effected by the Trustee during the Plan Year covered by the statement and also stating the assets of the Trust held at the end of the Plan Year, which accounts are conclusive on all persons, including the Employer and the Plan Committee, except as to any act or transaction concerning which the Employer or the Plan Committee files with the Trustee written exceptions or objections within 90 days after the receipt of the accounts or for which applicable law authorizes a longer period within which to object.
- (14) To begin, maintain or defend any litigation necessary in connection with the administration of the Plan, except that the Trustee is not obliged or required to do so unless indemnified to its satisfaction.

7.4. Records and Statements. The records of the Trustee pertaining to the Plan must be open to the inspection of the Plan Committee and the Employer at all reasonable times and may be audited from time to time by any person or persons as the Employer or Plan Committee may specify in writing. The Trustee or Ancillary Trustee must furnish the Plan Committee with whatever information relating to the Trust Fund the Plan Committee considers necessary.

7.5. Fees and Expenses from Fund. The Trustee will receive reasonable annual compensation as may be agreed upon from time to time between the Employer and the Trustee. No person who is receiving pay as an Employee of the Employer may receive compensation for services as Trustee. The Trustee will pay from the Trust Fund all fees and expenses reasonably incurred by it in its administration of the Trust unless the Employer pays such fees and expenses.

Any fee or expense paid, directly or indirectly, by the Employer is not an employer contribution to the Plan, provided the fee or expense relates to the ordinary and necessary administration of the Fund.

7.6. Parties to Litigation. Except as otherwise provided by applicable law, only the Employer, the Plan Committee and the Trustee shall be necessary parties to any court proceeding involving the Trustee as the Trustee of the Trust Fund or the Trust Fund. No Participant, or Beneficiary, shall be entitled to any notice of process unless required by applicable law. Any final judgment entered in any proceeding shall be conclusive upon the Employer, the Plan Committee, the Trustee, Participants and Beneficiaries.

7.7. Professional Agents. The Trustee may employ and pay from the Trust Fund, to the extent not otherwise paid by the Employer, reasonable compensation to agents, attorneys, accountants and other persons to advise the Trustee as in its opinion may be necessary. The Trustee may delegate to any agent, attorney, accountant or other person selected by it any non-Trustee power or duty vested in it by the Plan, and the Trustee may act or refrain from acting on the advice or opinion of any agent, attorney, accountant or other person so selected.

7.8. Distribution of Cash or Property. The Trustee may make distribution under the Plan in cash or property, or partly in each, at its fair market value as determined by the Trustee.

7.9. Distribution Directions. If no one claims a payment or distribution made from the Trust, the Trustee shall promptly notify the Plan Committee and shall handle or administer the payment in accordance with the subsequent direction of the Plan Committee.

7.10. Third Party Dealing with Multiple Trustees. No person dealing with the Trustee shall be obligated to see to the proper application of any money paid or property delivered to the Trustee, or to inquire whether the Trustee has acted pursuant to any of the terms of the Plan. Each person dealing with the Trustee may act upon any notice, request or representation in writing by the Trustee, or by the Trustee's duly authorized agent, and shall not be liable to any person in so acting. The certificate of the Trustee that it is acting in accordance with the Plan shall be conclusive in favor of any person relying on the certificate. If more than one Trustee or individual shall act as Trustee(s), the decision of a majority of the Trustees shall control (with or without a meeting) with respect to any decision regarding the administration or investment of the Trust Fund. However, the signature of only one Trustee is necessary to effect any transaction on behalf of the Trust.

7.11. Resignation. Any Trustee may resign its position at any time by giving written notice in advance to the City Manager of the Employer and to the Plan Committee. Vacancies shall be filled in accordance with Section 6.1.

7.12. Removal. Any Trustee may be removed by the City Manager of the Employer for cause or upon the recommendation of a majority of the remaining Trust members. In the event of the resignation or removal of the Trustee, vacancies shall be filled in accordance with Section 6.1. During any period the selection of a Trustee is pending, or during any period a Trustee is

unable to serve for any reason, the remaining person or persons will act as the Trustee(s).

7.13. Interim Duties and Successor Trustee. Each successor Trustee succeeds to the title to the Trust vested in his predecessor by accepting in writing his appointment as successor Trustee and by filing the acceptance with the former Trustee and the Plan Committee without the signing or filing of any further statement. The resigning or removed Trustee, upon receipt of acceptance in writing of the Trust by the successor Trustee, must execute all documents and do all acts necessary to vest the title of record in any successor Trustee. Each successor Trustee has and enjoys all of the powers, both discretionary and ministerial, conferred under this Plan upon his predecessor. A successor Trustee is not personally liable for any act or failure to act of any predecessor Trustee, except as required under federal law. With the approval of the Employer and the Plan Committee, a successor Trustee, with respect to the Plan, may accept the account rendered and the property delivered to it by a predecessor Trustee without incurring any liability or responsibility for so doing.

7.14. Valuation of Trust. The Trustee will value the Trust Fund as of each valuation date to determine the fair market value of each Participant's Account Value in the Trust. The Trustee will also value the Trust Fund on such other valuation dates as directed by the Plan Committee.

7.15. Limitation on Liability - If Investment Manager, Ancillary Trustee or Independent Fiduciary Appointed. The Trustee is not liable for the acts or omissions of any Investment Manager the Plan Committee or Trustee may appoint, nor is the Trustee under any obligation to invest or otherwise manage any asset of the Plan which is subject to the management of a properly appointed Investment Manager. The Plan Committee, the Trustee and any properly appointed Investment Manager may execute a letter agreement as a part of this Plan delineating the duties, responsibilities and liabilities of the Investment Manager with respect to any part of the Trust Fund under the control of the Investment Manager.

The limitation on liability described in this Section 7.15 also applies to the acts or omissions of any ancillary trustee or independent fiduciary properly appointed under Section 7.17. However, if a discretionary Trustee, pursuant to the delegation described in Section 7.17, appoints an ancillary trustee, the discretionary Trustee is responsible for the periodic review of the ancillary trustee's actions and must exercise its delegated authority in accordance with the terms of the Plan and in a manner consistent with applicable law. The Employer, the discretionary Trustee and an ancillary trustee may execute a letter agreement as a part of this Plan delineating any indemnification agreement between the parties.

7.16. Investment in Group Trust Fund. If permitted by law, the Trustee, for collective investment purposes, may combine into one trust fund the Trust created under this Plan with the Trust created under any other qualified retirement plan the Employer maintains. However, the Trustee must maintain separate records of account for the assets of each Trust in order to reflect properly each Participant's Account Value under the plan(s) in which he is a Participant.

7.17. Appointment of Ancillary Trustee or Independent Fiduciary. The Trust

Committee, in writing, may appoint any person in any State to act as ancillary trustee with respect to a designated portion of the Trust Fund. An ancillary trustee must acknowledge in writing its acceptance of the terms and conditions of its appointment as ancillary trustee and its fiduciary status. The ancillary trustee has the rights, powers, duties and discretion as the Trust Committee may delegate, subject to any limitations or directions specified in the instrument evidencing appointment of the ancillary trustee and to the terms of the Plan or applicable law. The investment powers delegated to the ancillary trustee may include any investment powers available under Section 7.3, including the right to invest any portion of the assets of the Trust Fund in a common trust fund, as described in Code §584, or in any collective investment fund, the provisions of which govern the investment of such assets and which the Plan incorporates by this reference, but only if the ancillary trustee is a bank or similar financial institution supervised by the United States or by a State and the ancillary trustee (or its affiliate, as defined in Code §1504) maintains the common trust fund or collective investment fund exclusively for the collective investment of money contributed by the ancillary trustee (or its affiliate) in a trustee capacity and which conforms to the rules of the Comptroller of the Currency. The Trust Committee also may appoint as an ancillary trustee, the trustee of any group trust fund designated for investment pursuant to the provisions of Section 7.16.

The ancillary trustee may resign its position at any time by providing at least 30 days' advance written notice to the Trust Committee, unless the Trust Committee waives this notice requirement. The Trust Committee, in writing, may remove an ancillary trustee at any time. In the event of resignation or removal, the Trust Committee may appoint another ancillary trustee, return the assets to the control and management of the Trustee or receive such assets in the capacity of ancillary trustee. The Trust Committee may delegate its responsibilities under this Section 7.17 to a Trustee under the Plan.

7.18. Standard of Care. The Trustee, each Investment Manager and the Plan Committee shall discharge their respective investment duties as provided herein with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims and by diversifying the investments held hereunder consistent with investment policies, objectives and guidelines so as to minimize the risk of large losses, unless under the Plan or circumstances it would be clearly not prudent to diversify.

7.19. Participant Direction of Investment. A Participant shall have the right to direct the Trustee with respect to the investment or reinvestment of the assets comprising the Participant's individual Account only if the Trustee consents in writing to permit such direction. The Trustee, by signature below, acknowledges consent to permit Participants to direct the investment of all assets in the Section 457 component plans. If the Trustee does consent to Participant direction of investment, the Trustee will accept direction from each Participant on a written election form (or other written agreement or through electronic means), as a part of this Plan, containing such conditions, limitations and other provisions the parties deem appropriate. The Trustee or, with the Trustee's consent, the Plan Committee, may establish written procedures, incorporated specifically as part of this Plan, relating to Participant direction of investment under this Section 7.19. The Trustee will maintain a segregated investment account

to the extent a Participant's Account is subject to Participant self-direction. The Trustee shall not be liable for any loss, nor is the Trustee liable for any breach, resulting from a Participant's direction of the investment of any part of his individual Account.

7.20. Limits of Liability. No member of the Trust Committee shall be liable for any act or omission of any other member of the Committee, nor for any act or omission on his/her own part, except his/her own willful misconduct. The Employer shall indemnify and hold harmless and defend each member of the Committee from any and all liabilities arising out of his/her membership on the Committee, except liabilities arising out of his/her own willful misconduct. This provision shall not apply to an outside service provider who is compensated.

ARTICLE 8

INVESTMENT ADVISORY COMMITTEE

8.1. Investment Advisory Committee. In accordance with RCW 35.39.080, the Trust Committee/Plan Committee will appoint an Investment Advisory Committee, which shall contain at least three members that are considered experienced and qualified in the field of investments. In the absence of an appointment the Trust Committee/Plan Committee will assume the powers, duties and responsibilities of the Investment Advisory Committee.

8.2. Chairperson. The Investment Advisory Committee shall elect, from among its members, a chairperson, who shall preside at all Committee meetings, and who shall have full authority to carry out any decisions made by the Committee.

8.3. Secretary. The Investment Advisory Committee shall elect, from among its members, a secretary, who shall keep the minutes of the Committee's proceedings and a record of all matters pertaining to the actions of the Committee.

8.4. Authorized Agent. The Secretary, or any other member, duly authorized to do so, may execute any certificate, or any other written direction on behalf of the Investment Advisory Committee.

8.5. Voting. The Investment Advisory Committee shall act upon the affirmative vote or written consent of a majority of its members.

8.6. Compensation and Bond. Members of the Investment Advisory Committee will receive reasonable annual compensation as may be agreed upon from time to time between the Trust Committee/Plan Committee and the Investment Advisory Committee members. Any member of the Investment Advisory Committee who is receiving pay as an Employee of the Employer shall serve without bond and without compensation for their services as such.

8.7. Powers and Duties. The Investment Advisory Committee shall have the following powers and duties:

- (a) To make recommendations as to general investment policies, practices and procedures to the Trust Committee;
- (b) To review the investment transactions of the Trustee annually;
- (c) To prepare a written report of its activities during each fiscal year. Each report shall be submitted not more than thirty (30) days after the end of each fiscal year to the Trust Committee and to any other person who has submitted a request therefor.

8.8. Employment of Members. No member of the Investment Advisory Committee shall be employed by any investment brokerage or mortgage servicing firm doing business with the Trust Committee relative to the Trust Fund.

8.9. Limits of Liability. No member of the Investment Advisory Committee shall be liable for any act or omission of any other member of the Committee, nor for any act or omission on his/her own part, except his/her own willful misconduct. The Employer shall indemnify and hold harmless and defend each member of the Committee from any and all liabilities arising out of his/her membership on the Committee, except liabilities arising out of his/her own willful misconduct. This provision shall not apply to an outside service provider who is compensated.

8.10. Appointment and Term of Office. The appointment and the terms of office of each member of the Investment Advisory Committee shall be as determined by the Trust Committee.

ARTICLE 9

AMENDMENT OR TERMINATION OF PLAN AND TRUST

9.1. The Employer reserves the right to terminate this Plan at any time. Upon such termination, the Participants in the Plan will be deemed to have ceased deferrals under the Plan as of the date of such termination, and the Participant's deferred salary will be restored and paid directly to the Participant as regularly scheduled. The Employer will thereafter pay benefits under the Plan and Trust according to the Participant's Benefit Payment Agreement, at the time of the Participant's Separation from Service, or upon the death of the Participant, or such other payment event as described in this Plan.

9.2. The Employer also reserves the right to modify or amend the provisions of this Plan at any time.

9.3. No amendment will deprive the Participant of any benefits to which the Participant is entitled under the Plan with respect to deferred amounts credited to the Participant's account before the effective date of the amendment. However, the Employer may at any time amend the Plan, in the event such amendment is necessary to qualify the Plan for tax

exemption notwithstanding that such amendment may have the effect of depriving a Participant or Beneficiary of a right or benefit which has accrued.

9.4. The Employer also reserves the right of amend the Trust provisions at any time in order to maintain its tax exempt status under Section 501(a) of the Code and/or to comply with the provisions of Section 457(g) of the Code, as may be amended from time to time. In addition, the Employer reserves the right to terminate the Trust in conjunction with its election to terminate the Plan (as reserved in Section 9.1) or to continue the Trust as a "frozen Trust" following termination of the Plan, in its sole and absolute discretion.

ARTICLE 10

CLAIMS FOR BENEFITS

10.1. **Submission of Claims.** Any claim for specific benefits under any Component Plan shall be made in accordance with the applicable Component Plan or in accordance with any claims procedures set forth in such Component Plan document. Otherwise claims for benefits under this Plan are to be submitted to the Plan Committee.

10.2. **Appeal of Denial of Claim.** If an Employee's claim for benefits under this Plan is denied, the Administrator shall provide notice to the Employee in writing of the denial within 90 days after its submission. The notice shall be written in a manner calculated to be understood by the applicant and shall include:

- (a) The specific reason or reasons for the denial;
- (b) Specific references to the pertinent Plan provisions on which the denial is based;
- (c) A description of any additional material or information necessary for the applicant to perfect the claim and an explanation of why such material or information is necessary; and
- (d) An explanation of the Plan's claims review procedures.

If special circumstances require an extension of time for processing the initial claim, a written notice of the extension and the reason therefor shall be furnished to the claimant before the end of the initial 90-day period. In no event shall such extension exceed 90 days.

If a claim for benefits is denied or if the applicant has had no response to such claim within 90 days of its submission (in which case the claim for benefits shall be deemed to have been denied), the applicant, at the applicant's sole expense, may appeal the denial to the Employer within 60 days of the receipt of written notice of the denial or 60 days from the date such claim is deemed to be denied. In pursuing such appeal, the applicant or his duly authorized representative:

- (1) May request in writing that the Employer review the denial;
- (2) May review pertinent documents; and
- (3) May submit issues and comments in writing.

The decision on review shall be made within 60 days of receipt of the request for review, unless special circumstances require an extension of time for processing, in which case a decision shall be rendered as soon as possible, but not later than 120 days after receipt of the request for review. If such an extension of time is required, written notice of the extension shall be furnished to the claimant before the end of the original 60-day period. The decision on review shall be made in writing, shall be written in a manner calculated to be understood by the claimant, and shall include specific references to the provisions of the Plan on which the denial is based. If the decision on review is not furnished within the time specified above, the claim shall be deemed denied on review.

All decisions of the Plan Committee in matters properly coming before it according to the terms of this Plan, and all actions taken by the Plan Committee in the proper exercise of its administrative powers, duties and responsibilities, will be final and binding upon all Employees, Participants and Beneficiaries and upon any person having or claiming any rights or interest in this Plan unless it can be shown that the decision, action, interpretation or determination was arbitrary and capricious.

ARTICLE 11

NON-ASSIGNABILITY

11.1. It is agreed that neither a Participant nor the Participant's Beneficiary or any other designee shall have any claim or right to commute, sell, assign, transfer or otherwise convey the right to receive any payments hereunder, which payments and right thereto are expressly declared to be non-assignable and non-transferable by operation of law. Further, a Participant's or Beneficiary's interest in the Trust is not subject to attachment, garnishment, levy, execution or other equitable or legal process.

11.2. Except as provided in Article 7, the Employer shall have no beneficial interest in any assets of the Trust established therein, and no part of any asset in the Trust shall ever revert to or be paid to an Employer, either directly or indirectly; nor shall any part of the corpus or income of the Trust Fund, or any asset of the Trust, be, at any time, used for, or diverted to, purposes other than the exclusive benefit of the Participants or their Beneficiaries. The Trust Fund shall constitute a spendthrift trust under applicable state and federal law.

ARTICLE 12

RELATIONSHIP TO OTHER PLANS

12.1. The Trust established in Article 7 herein or within any Component Plan shall be effective and operate in addition to any other retirement, pension or benefit plan or arrangement presently in existence or hereinafter established, and participation hereunder shall not affect benefits receivable under any such other plan or arrangement.

ARTICLE 13 GENERAL PROVISIONS

13.1. **Construction.** This Plan shall be construed, administered and governed in all respects by the laws of the State of Washington, except to the extent superseded by federal law.

13.2. **Severability.** If any provision of this Plan Document is held to be unlawful or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of the Plan Document.

13.3. **Headings and Subheadings.** The headings and subheadings of this Plan are inserted solely for convenience of reference and are not to be considered in construction of the provisions of this Plan.

13.4. **Gender and Number.** Whenever any words are used herein in the masculine gender they shall be construed as though they were used in the feminine gender, and words in singular forms shall be construed as though they were used in the plural form, in all cases where they would so apply.

13.5. **Right of Recovery.** In the event that payments are made pursuant to this Plan in a total amount which is, at any time, in excess of the maximum amount of payment necessary to satisfy the intent of this Plan, the Plan Committee shall have the right to recover such payments, to the extent of such excess, from among one or more of the following, as the Plan Committee shall determine: (a) Any persons to or for or with respect to whom such payments were made; (b) Any Insurance Carrier; and (c) Any other organizations. Failure to invoke this provision on any claim shall not waive the Plan's right to invoke it on subsequent claims.

13.6. **Information to Be Furnished.** Participants shall provide the Employer and Administrator with such information and evidence, and shall sign such documents, as may reasonably be requested from time to time for the purpose of administration of the Plan.

13.7. **Limitation of Rights.** Neither the establishment of the Plan nor any amendment thereof, nor the payment of any benefits, will be construed as giving to any Participant or other person any legal or equitable right against the Employer or Administrator, except as provided herein.

13.8. **Plan Not Contract.** The Plan shall not be deemed to be a contract between the Employer and any Employee or to be a consideration or an inducement for the employment of any employee. No Employee in the Plan shall acquire any right to be retained in the Employer's

employ by virtue of the Plan, nor, upon his dismissal or upon his voluntary termination of employment, shall he have any right or interest in the Plan other than as specifically provided herein. Except to the extent required by law, the employer shall not be liable for the payment of any benefit provided for herein; all benefits hereunder shall be payable only from the Plan, and only to the extent that the Plan has been allocated sufficient assets.

13.9. Legal Action Against Plan. No legal action against the Plan for the recovery of any claim shall be commenced within 60 days or after 3 years from the expiration of the time in which proof of claim is required.

ARTICLE 14 RATIFICATION

Except as expressly modified herein, the provisions of the Section 457 Deferred Compensation Plans and this Trust are hereby ratified, approved and confirmed.

IN WITNESS WHEREOF, the Employer and the Trustee have executed this Plan and Trust in Bellevue, Washington, this ____ day of _____, 20____.

EMPLOYER:

CITY OF BELLEVUE, WASHINGTON

By: _____

Its: _____

TRUSTEES:

By: _____
Ed Oberg

By: _____
Randy Holmes

By: _____
Doran Beauclair

By: _____
Mike Eisner

By: _____
John Backman

APPROVED AS TO FORM:

PAUL McDONALD
Birmingham, Thorson & Barnett, P.C.

EXHIBIT A

List of Deferred Compensation Programs

A. United States Conference of Mayors Deferred Compensation Plan for Public Employees (Nationwide)

Employees of the City of Bellevue may elect to participate in the United States Conference of Mayors Deferred Compensation Plan for Public Employees in accordance with the terms and conditions of such plan attached at Appendix A and included by reference as a part of this Plan as a Component Plan.

B. ICMA Retirement Corporation Employer's Deferred Compensation Plan and Trust

Employees of the City of Bellevue may elect to participate in the ICMA Retirement Corporation Employer's Deferred Compensation Plan and Trust in accordance with the terms and conditions of such plan attached at Appendix B and included by reference as a part of this Plan as a Component Plan.

**City of
Bellevue****Management Brief**

Date: June 18, 2004
TO: Mayor and City Council
FROM: Jan Hawn, Finance Director
SUBJECT: Special Council Meeting – June 24th – Sale of LTGO Bonds

On May 24, 2004, staff presented Council with a draft of the ordinance authorizing the issuance and sale of Limited Tax General Obligation (LTGO) Bonds for the New City Building.

Please recall that the bonds for the New City Building will be sold on June 24, 2004 at 10:00 a.m. Subsequent to the sale of the bonds that morning, Preston Gates Ellis LLP will prepare the final ordinance for approval by City Council at a Special Meeting scheduled that same day (Thursday, June 24) at 12:00 Noon.

Please find attached a draft of the agenda item approving the sale of the LTGO bonds. This information is being provided in advance so that you can review the materials and staff can respond to questions in advance of that meeting.

Staff is currently finalizing an investment strategy for the bond proceeds that adheres to the following principles:

- Prudently protects the principal sum of the bond proceeds;
- Assures adequate liquidity to meet the obligations of the project;
- Maximizes investment return.

This strategy is based on a laddered investment approach that assures that sufficient cash is available during the renovation of the New City Building based on the most recent construction schedule prepared by Lease Crutcher Lewis.

While we have been working with several banks and brokerage firms, the actual placement of the investments will not be known until rates are quoted nearer the date of closing on the bonds, which is scheduled for July 8, 2004.

If you have any questions, please let me know.

Attachment

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT

Ordinance No. _____, authorizing the issuance and sale of Limited Tax General Obligation (LTGO) Bonds for the New City Building.

STAFF CONTACT

Jan Hawn, Finance Director, 452-6846

POLICY ISSUES

Shall the Council authorize the issuance and sale of Limited Tax General Obligation bonds for the New City Building?

DIRECTION NEEDED FROM COUNCIL

☒ Action at June 24 Special Meeting
☐ Discussion
☐ Information

FISCAL IMPACT

On June 1, 2004, City Council approved the Maximum Allowable Construction Cost (MACC) and Comprehensive Finance Plan for the New City Building and directed staff to proceed with the issuance of approximately \$102.7 million in Limited Tax General Obligation (LTGO) bonds with a 40-year term based on the net project budget of \$101.55 million. The actual amount of the bond issue may be adjusted based on market conditions on the date of sale.

The following table describes the sources and uses of the funds for the approximate \$102.7 million LTGO Bond:

Sources:

Bond Proceeds-Par Amount	<u>\$ 102,710,000</u>
--------------------------	-----------------------

Uses:

Project Fund Deposits:	
City Building and BAN principal repayment	\$ 100,385,000 ¹
Estimated Delivery Date Expenses ² :	
Bond Rating Agencies	45,000
Bond Counsel	60,000
Financial Advisor	40,000
Other Cost of Issuance (e.g., publication, printing, etc.)	25,000
Underwriter's Discount	719,000
Bond Insurance @ 25 basis points	634,000 ³
Other uses of funds:	
BAN Interest	800,000
Additional Proceeds	2,000
Total Uses	<u>\$ 102,710,000</u>

¹ Net Bond Proceeds	\$100,385,000
Estimated Interest Earnings	<u>1,165,000</u>
Net Project Budget	\$101,550,000

² The costs are estimated at this time. Final costs will be available subsequent to the sale of the bonds.

³ Underwriters are allowed the option of bidding on the bonds with or without bond insurance. The city selects the winning bid based on the true interest cost (TIC). Consequently, bond insurance is included as a possible cost

Annual payments for debt service are estimated at \$6.6 million, resulting in a maximum use of General CIP revenue (Sales and B&O Taxes) of 22.6% in 2010.

In accordance with the terms of the bond ordinance, the full faith, credit and resources of the City are irrevocably pledged for the prompt payment of the principal of and interest on the bonds as the same shall become due, whether through existing City resources or the annual levy of taxes upon all property in the City subject to taxation, in amounts sufficient for this purpose.

POLICY CONSIDERATION

Shall the City issue 40-year Limited Tax General Obligation Bonds to finance the New City Building project? With interest rates at their lowest level in forty years, it is expedient to move quickly to secure these low interest rates during this window of opportunity.

BACKGROUND

In December of 2002, the City issued a \$29.1 million Bond Anticipation Note (BAN) for the purchase of the Qwest building. The BAN will be retired with long-term Limited Tax General Obligation Bonds (LTGO Bonds).

Council adopted the final Maximum Allowable Construction Cost (MACC) and approved the Comprehensive Finance Plan on June 1, 2004. Bond funds will be used to repay the current BAN, to reimburse the City for certain costs paid for the renovation of the New City Building and to fund needed improvements to the New City Building.

The bonds will be competitively sold on June 24, 2004 at 10:00 a.m. Thereafter, a memo will be provided to Council providing the details of the pricing and staff's recommendation. The ordinance included with this Agenda Memo has several blanks that will be filled in after the bids are received and prior to Council action. The ordinance will be presented to Council for consideration on June 24, 2004 at the 12:00 Noon Special Meeting with the actual numbers inserted following the sale which will have occurred earlier that morning.

EFFECTIVE DATE

If approved, this ordinance will become effective June 30, 2004

OPTIONS

1. Adopt Ordinance No. _____, authorizing the issuance and sale of Limited Tax General Obligation (LTGO) Bonds for the New City Building
2. Do not approve Ordinance No. _____ and provide alternative direction to staff to redesign the Finance Plan to utilize a different long-term financing mechanism.

RECOMMENDATION

1. Adopt Ordinance No. _____, authorizing the issuance and sale of Limited Tax General Obligation (LTGO) Bonds for the New City Building

MOTION

Move to adopt Ordinance No. _____, authorizing the issuance and sale of Limited Tax General Obligation (LTGO) Bonds for the New City Building

ATTACHMENTS

Proposed Ordinance No. _____

AVAILABLE IN COUNCIL OFFICE

N/A

CITY OF BELLEVUE, WASHINGTON
LIMITED TAX GENERAL OBLIGATION BONDS, 2004 (CITY BUILDING)

\$_____

ORDINANCE NO. _____

AN ORDINANCE of the City of Bellevue, Washington, providing for the issuance and sale of limited tax general obligation bonds of the City in the principal amount of \$_____ for the purpose of providing funds to redeem the City's Limited Tax General Obligation Bond Anticipation Note, 2002 (Taxable) used to acquire the New City Building, to finance renovation and improvement costs thereto, to pay interest during renovation and to pay bond issuance costs; providing the date, form, terms and maturities of the bonds; and providing for the annual levy of taxes to pay the principal of and interest on the bonds.

Passed: June ____, 2004

Prepared By

PRESTON GATES & ELLIS LLP
925 Fourth Avenue, Suite 2900
Seattle, Washington 98104-1158
(206) 623-7580

ORDINANCE NO. _____

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* This Table of Contents is provided for reference only and does not constitute a part of the Ordinance for which it is provided.

ORDINANCE NO. _____

AN ORDINANCE of the City of Bellevue, Washington, providing for the issuance and sale of limited tax general obligation bonds of the City in the principal amount of \$_____ for the purpose of providing funds to redeem the City's Limited Tax General Obligation Bond Anticipation Note, 2002 (Taxable) used to acquire the New City Building, to finance renovation and improvement costs thereto, to pay interest during renovation and to pay bond issuance costs; providing the date, form, terms and maturities of the bonds; and providing for the annual levy of taxes to pay the principal of and interest on the bonds.

WHEREAS, the City Council (the "Council") of the City of Bellevue, Washington (the "City"), has previously issued its Limited Tax General Obligation Bond Anticipation Note, 2002 (Taxable) (the "Note") to evidence a taxable line of credit with Bank of America, N.A., which the City has drawn upon to finance the acquisition of a site in downtown Bellevue, including existing improvements thereon, for the development of a public facility for public safety and other civic uses (the "New City Building"); and

WHEREAS, given the current favorable interest rate environment the Council has determined to prepay the Note and establish long-term interest rates with respect to the debt incurred to acquire the New City Building; and

WHEREAS, the Council has determined that it is also in the public interest to proceed to finance certain renovation and improvement costs of the New City Building; and

WHEREAS, to provide the funds required to prepay the outstanding Note, to reimburse the City for certain costs paid by it to plan for the renovation of the New City Building, to provide the funds needed for improvements to the New City Building and to pay interest during renovation, the City now desires to authorize the issuance of limited

tax general obligation bonds in the principal amount of \$_____ (the "Bonds") and to authorize the sale of the Bonds; and

WHEREAS, the City has reserved the right to lease portions of the New City Building to charitable institutions described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code") in furtherance of their charitable purposes, and has held a public hearing meeting the requirements of Section 147(f) of the Code; and

WHEREAS, the City provided notice of its intent to sell the Bonds by competitive bid in the form of the Official Notice of Bond Sale, attached as Exhibit A, and received _____ bids for the purchase of the Bonds; and

WHEREAS, _____ (the "Purchaser") submitted the bid, attached as Exhibit B, to purchase the Bonds at the lowest true interest cost to the City;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Definitions. As used in this ordinance, the following words shall have the following meanings, unless a different meaning clearly appears from the context:

"Arbitrage and Tax Certification" means the certificate executed by the Finance Director pertaining to the tax-exemption of interest on the Bonds and the calculation and payment of any Rebate Amount with respect to the Bonds.

["Bond Insurance Policy" means the municipal bond insurance policy issued by the Insurer insuring the payment when due of the principal of and interest on the Bonds, as provided herein.]

"Bond Register" means the books or records maintained by the Bond Registrar for the registration and transfer of the Bonds containing the name and mailing address of the owner of each Bond or nominee of such owner and such other information as the Bond Registrar shall determine.

"Bond Registrar" means the fiscal agency of the State of Washington for the purposes of registering and authenticating the Bonds, maintaining the Bond Register, effecting transfer of ownership of the Bonds and paying principal of and interest on the Bonds, and any subsequent Bond Registrar designated by the City.

"Bonds" means the \$_____ principal amount of the City of Bellevue, Washington, Limited Tax General Obligation Bonds, 2004 (New City Building), issued pursuant to and for the purposes provided in this ordinance.

"Code" means the Internal Revenue Code of 1986, as amended, together with corresponding and applicable final, temporary or proposed regulations and revenue rulings issued or amended with respect thereto by the U.S. Treasury Department or the Internal Revenue Service, to the extent applicable to the Bonds.

"City" means the City of Bellevue, Washington, a municipal corporation duly organized and existing under and by virtue of the Constitution and laws of the State of Washington.

"Council" means the legislative authority of the City as the same shall be duly and regularly constituted from time to time.

"Debt Service Fund" means the Interest and Debt Redemption Regular Levy fund of the City.

"DTC" means The Depository Trust Company of New York, as depository for the Bonds, or any successor or substitute depository for the Bonds.

"Finance Director" means the Finance Director of the City, or any successor to the functions of the Director of Finance.

"Insurer" means _____.]

"Letter of Representations" means the Blanket Letter of Representations from the City to DTC.

"MSRB" means the Municipal Securities Rulemaking Board or any successors to its functions.

"New City Building Project Fund" means the fund of that name established pursuant to Section 12 hereof.

"Note" means the City of Bellevue, Washington, Limited Tax General Obligation Bond Anticipation Note, 2002 (Taxable), dated December 19, 2002 and issued to finance the cost of acquiring and developing the New City Building.

"NRMSIR" means a nationally recognized municipal securities information repository.

"Rebate Amount" means the amount, if any, determined to be payable with respect to the Bonds by the City to the United States of America in accordance with Section 148(f) of the Code.

"Registered Owner" means the person in whose name a Bond is registered on the Bond Register. For so long as the City utilizes the book-entry system for the Bonds, DTC shall be deemed to be the Registered Owner.

"Rule" means the SEC's Rule 15c2-12 under the Securities and Exchange Act of 1934, as the same may be amended from time to time.

"SEC" means the Securities and Exchange Commission.

"SID" means a state information depository for the State of Washington (if one is created).

Section 2. Findings. The Council hereby finds that it is in the public interest and benefits the inhabitants of the City to prepay the City's outstanding Note used to acquire the New City Building, reimburse the City for costs incurred to plan for the renovation of the New City Building and finance improvements thereto through the issuance of the Bonds.

Section 3. Authorization and Description of Bonds. The City shall issue the Bonds in the principal amount of \$_____ for the purposes of prepaying the Note (including paying accrued interest), reimbursing the City for costs incurred to plan for the renovation of the New City Building, financing improvements to the New City Building, paying interest on the Bonds during renovation and paying costs of issuing the Bonds. The Bonds shall be designated the "City of Bellevue, Washington, Limited Tax General Obligation Bonds, 2004 (City Building)" shall be dated as of July 1, 2004, shall be fully registered as to both principal and interest, shall be in the denomination of \$5,000 each or any integral multiple thereof, provided that no Bond shall represent more than one maturity, shall be numbered separately in such manner and with any

additional designation as the Bond Registrar deems necessary for purposes of identification and control, and shall bear interest payable on December 1, 2004, and semiannually thereafter on the first days of June and December. Interest on the Bonds shall be calculated based on a 360-day year of twelve 30-day months. The Bonds shall bear interest at the following rates and mature on December 1 in the following years and in the following amounts:

Maturity Year (December 1)	Principal Amount	Interest Rate	Maturity Year (December 1)	Principal Amount	Interest Rate
2010	\$	%	2027	\$	%
2011			2028		
2012			2029		
2013			2030		
2014			2031		
2015			2032		
2016			2033		
2017			2034		
2018			2035		
2019			2036		
2020			2037		
2021			2038		
2022			2039		
2023			2040		
2024			2041		
2025			2042		
2026			2043		

Section 4. Registration, Exchange and Payments.

(a) *Registrar/Bond Register.* The City hereby adopts the system of registration approved by the Washington State Finance Committee, which utilizes the fiscal agency of the State of Washington in New York, New York, as registrar, authenticating agent, paying agent and transfer agent (collectively, the "Bond Registrar"). The Bond Registrar shall keep, or cause to be kept, at its principal corporate trust office, sufficient records for the registration and transfer of the Bonds

(the "Bond Register"), which shall be open to inspection by the City. The Bond Registrar is authorized, on behalf of the City, to authenticate and deliver Bonds transferred or exchanged in accordance with the provisions of such Bonds and this ordinance and to carry out all of the Bond Registrar's powers and duties under this ordinance. The Bond Registrar shall be responsible for its representations contained in the Certificate of Authentication on the Bonds.

(b) *Registered Ownership.* The City and the Bond Registrar may deem and treat the Registered Owner of each Bond as the absolute owner for all purposes, and neither the City nor the Bond Registrar shall be affected by any notice to the contrary. Payment of any such Bond shall be made only as described in Section 4(h) hereof, but such registration may be transferred as herein provided. All such payments made as described in Section 4(h) shall be valid and shall satisfy the liability of the City upon such Bond to the extent of the amount or amounts so paid.

(c) *DTC Acceptance/Letter of Representations.* The Bonds shall initially be held in fully immobilized form by DTC acting as depository. To induce DTC to accept the Bonds as eligible for deposit at DTC, the City has executed and delivered to DTC a Blanket Issuer Letter of Representations (the "Letter of Representations").

Neither the City nor the Bond Registrar will have any responsibility or obligation to DTC participants or the persons for whom they act as nominees with respect to the Bonds for the accuracy of any records maintained by DTC or any DTC participant, the payment by DTC or any DTC participant of any amount in respect of the principal of or interest on Bonds, any notice that is permitted or required to be given to Registered Owners under this ordinance (except such notices as shall be required to be given by

the City to the Bond Registrar or to DTC), the selection by DTC or any DTC participant of any person to receive payment in the event of a partial redemption of the Bonds, or any consent given or other action taken by DTC as the Registered Owner. For so long as any Bonds are held in fully immobilized form hereunder, DTC or its successor depository shall be deemed to be the Registered Owner for all purposes, and all references in that ordinance to the Registered Owners shall mean DTC or its nominee and shall not mean the owners of any beneficial interest in any Bonds.

(d) *Use of Depository.*

(i) The Bonds shall be registered initially in the name of CEDE & Co., as nominee of DTC, with a single Bond for each maturity in a denomination equal to the total principal amount of such maturity. Registered ownership of such immobilized Bonds, or any portions thereof, may not thereafter be transferred except (A) to any successor of DTC or its nominee, provided that any such successor shall be qualified under any applicable laws to provide the service proposed to be provided by it; (B) to any substitute depository appointed by the City pursuant to subsection (ii) below or such substitute depository's successor; or (C) to any person as provided in subsection (iv) below.

(ii) Upon the resignation of DTC or its successor (or any substitute depository or its successor) from its functions as depository or a determination by the City to discontinue the system of book entry transfers through DTC or its successor (or any substitute depository or its successor), the City may appoint a substitute depository. Any such substitute depository shall be qualified under any applicable laws to provide the services proposed to be provided by it.

(iii) In the case of any transfer pursuant to clause (A) or (B) of subsection (i) above, the Bond Registrar shall, upon receipt of all outstanding Bonds, together with a written request on behalf of the City, issue a single new Bond for each maturity then outstanding, registered in the name of such successor or substitute depository, or its nominee, all as specified in such written request of the City.

(iv) In the event that (A) DTC or its successor (or substitute depository or its successor) resigns from its functions as depository, and no substitute depository can be obtained, or (B) the City determines that it is in the best interest of the beneficial owners of the Bonds that the Bonds be provided in certificated form, the ownership of such Bonds may then be transferred to any person or entity as herein provided, and shall no longer be held in fully immobilized form. The City shall deliver a written request to the Bond Registrar, together with a supply of definitive Bonds in certificated form, to issue Bonds in any authorized denomination. Upon receipt by the Bond Registrar of all then outstanding Bonds together with a written request on behalf of the City to the Bond Registrar, new Bonds shall be issued in the appropriate denominations and registered in the names of such persons as are provided in such written request.

(e) *Transfer or Exchange of Registered Ownership; Change in Denominations.* The registered ownership of any Bond may be transferred or exchanged, but no transfer of any Bond shall be valid unless it is surrendered to the Bond Registrar with the assignment form appearing on such Bond duly executed by the Registered Owner or such Registered Owner's duly authorized agent in a manner satisfactory to the Bond Registrar. Upon such surrender, the Bond Registrar shall cancel the surrendered Bond and shall authenticate and deliver, without charge to the

Registered Owner or transferee, a new Bond (or Bonds at the option of the new Registered Owner) of the same date, maturity and interest rate and for the same aggregate principal amount in any authorized denomination, naming as Registered Owner the person or persons listed as the assignee on the assignment form appearing on the surrendered Bond, in exchange for such surrendered and canceled Bond. Any Bond may be surrendered to the Bond Registrar and exchanged, without charge, for an equal aggregate principal amount of Bonds of the same date, maturity and interest rate, in any authorized denomination. The Bond Registrar shall not be obligated to transfer or exchange any Bond during a period beginning at the opening of business on the 15th day of the month next preceding any interest payment date and ending at the close of business on such interest payment date, or, in the case of any proposed redemption of the Bonds, after the mailing of notice of the call of such Bonds for redemption.

(f) *Bond Registrar's Ownership of Bonds.* The Bond Registrar may become the Registered Owner of any Bond with the same rights it would have if it were not the Bond Registrar, and to the extent permitted by law, may act as depository for and permit any of its officers or directors to act as member of, or in any other capacity with respect to, any committee formed to protect the rights of the Registered Owners of the Bonds.

(g) *Registration Covenant.* The City covenants that, until all Bonds have been surrendered and canceled, it will maintain a system for recording the ownership of each Bond that complies with the provisions of Section 149 of the Code.

(h) *Place and Medium of Payment.* Both principal of and interest on the Bonds shall be payable in lawful money of the United States of America. For so long as all Bonds are in fully immobilized form, payments of principal and interest shall be made as provided in accordance with the operational arrangements of DTC referred to in the Letter of Representations. In the event that the Bonds are no longer in fully immobilized form, interest on the Bonds shall be paid by check or draft mailed to the Registered Owners at the addresses for such Registered Owners appearing on the Bond Register on the 15th day of the month preceding the interest payment date, and principal of the Bonds shall be payable upon presentation and surrender of such Bonds by the Registered Owners at the principal office of the Bond Registrar; provided, however, that if so requested in writing by the Registered Owner of at least \$1,000,000 principal amount of Bonds, interest will be paid by wire transfer on the date due to an account with a bank located within the United States.

Section 5. Redemption; Purchases.

(a) *Optional Redemption.* The Bonds maturing on and after December 1, 2015, are subject to redemption prior to maturity at the option of the City in whole or in part on any date on or after December 1, 2014 (with maturities selected by the City), at par, plus accrued interest to the date of redemption. If less than a whole of a maturity is called for redemption, the Bonds to be redeemed shall be chosen by lot in integral multiples of \$5,000 by the Bond Registrar or, so long as the Bonds are registered in the name of Cede & Co. or its registered assign, according to the operational arrangements of DTC, as then in effect.

(b) *Mandatory Redemption.* The Bonds maturing on December 1, 20____, December 1, 20__ and December 1, 20__ shall be redeemed prior to maturity by lot (or paid at maturity), not later than December 1 in the years and in the principal amounts set forth below, without premium, together with the interest accrued to the date fixed for redemption.

Bonds Maturing on December 1, 20____

<u>Year</u>	<u>Amount</u>
	\$

* Final Maturity

Bonds Maturing on December 1, 20____

<u>Year</u>	<u>Amount</u>
	\$

* Final Maturity

Bonds Maturing on December 1, 20____

<u>Year</u>	<u>Amount</u>
	\$

* Final Maturity

(c) *Partial Redemption.* If less than all of the principal amount of any Bond is redeemed, upon surrender of such Bond at the principal office of the Bond Registrar, there shall be issued to the registered owner, without charge, for the then unredeemed balance of the principal amount, a new Bond or Bonds, at the option of the registered owner, of like maturity and interest rate in any authorized denomination.

(d) *Notice of Redemption.* Written notice of any redemption of Bonds shall be given by the Bond Registrar on behalf of the City by first class mail, postage prepaid, not less than 30 days nor more than 60 days before the redemption date to the

registered owners of Bonds that are to be redeemed at their last addresses shown on the Bond Register. So long as the Bonds are in book-entry form, notice of redemption shall be made according to the operational arrangements of DTC, as then in effect. The Bond Registrar shall provide additional notice of redemption (at least 30 days) to each NRMSIR and SID, if any, in accordance with Section 17.

The requirements of this section shall be deemed complied with when notice is mailed, whether or not it is actually received by the owner.

Each notice of redemption shall contain the following information: (1) the redemption date, (2) the redemption price, (3) if less than all outstanding Bonds are to be redeemed, the identification (and, in the case of partial redemption, the principal amounts) of the Bonds to be redeemed, (4) a statement that on the redemption date the redemption price will become due and payable upon each Bond or portion called for redemption, and that interest shall cease to accrue from the redemption date, (5) a statement that the Bonds are to be surrendered for payment at the principal office of the Bond Registrar, (6) the CUSIP numbers of all Bonds being redeemed, (7) the dated date of the Bonds, (8) the rate of interest for each Bond being redeemed, (9) the date of the notice, and (10) any other information needed to identify the Bonds being redeemed.

Upon the payment of the redemption price of Bonds being redeemed, each check or other transfer of funds issued for such purpose shall bear the CUSIP number identifying, by issue and maturity, the Bonds being redeemed with the proceeds of such check or other transfer.

(e) *Effect of Redemption.* Unless the City has revoked a notice of redemption, the City shall transfer to the Bond Registrar amounts that, in addition to other money, if any, held by the Bond Registrar, will be sufficient to redeem, on the redemption date, all the Bonds to be redeemed. From the redemption date interest on each Bond to be redeemed shall cease to accrue.

(f) *Amendment of Notice Provisions.* The foregoing notice provisions of this section, including but not limited to the information to be included in redemption notices and the persons designated to receive notices, may be amended by additions, deletions and changes in order to maintain compliance with duly promulgated regulations and recommendations regarding notices of redemption of municipal securities.

(g) *Purchase by City.* The City reserves the right to purchase any of the Bonds at any time and at any price.

Section 6. Creation of Debt Service Fund and Provision for Tax Levy Payments. The "Interest and Debt Redemption Regular Levy Fund" (the "Debt Service Fund") has heretofore been established by the City. The Debt Service Fund shall be drawn upon for the sole purpose of paying the principal of and interest on the Bonds.

The City hereby irrevocably covenants for as long as any of the Bonds are outstanding and unpaid that each year it will include in its budget and levy an ad valorem tax, within and as a part of the tax millage levy permitted to cities without a vote of the people, upon all the property within the City subject to taxation in an amount which will be sufficient, together with other lawfully available funds, to pay the principal of and interest on the Bonds as the same shall become due. All of such taxes and any

of such other money so collected shall be paid into the Debt Service Fund. None of the money in the Debt Service Fund shall be used for any other purpose than the payment of the principal of and interest on the Bonds. Money in the Debt Service Fund not needed to pay the interest or principal next coming due may temporarily be deposited in such institutions or invested in such obligations as may be lawful for the investment of City money. Any interest or profit from the investment of such money shall be deposited in the Debt Service Fund.

The City hereby irrevocably pledges that a sufficient portion of each annual levy to be levied and collected by the City prior to the full payment of the principal of and interest on the Bonds will be and is hereby irrevocably set aside, pledged and appropriated for the payment of the principal of and interest on the Bonds. The full faith, credit and resources of the City are hereby irrevocably pledged for the annual levy and collection of said taxes and for the prompt payment of the principal of and interest on the Bonds as the same shall become due.

Section 7. Defeasance. In the event that money and/or "Government Obligations," as such Obligations are now or may hereafter be defined in Chapter 39.53 RCW, maturing at such time or times and bearing interest to be earned thereon in amounts sufficient to redeem and retire the Bonds or a portion of the Bonds in accordance with their terms, are set aside in a special account to effect such redemption or retirement and such money and the principal of and interest on such Obligations are irrevocably set aside and pledged for such purpose, then no further payments need be made into the Bond Fund for the payment of the principal of and interest on the Bonds so provided for and such Bonds shall cease to be entitled to any

lien, benefit or security of this ordinance except the right to receive the funds so set aside and pledged, and such Bonds shall be deemed not to be outstanding hereunder. Within 30 days of any defeasance of Bonds, the City shall provide notice of defeasance of Bonds to registered owners and to each NRMSIR and SID, if any, in accordance with Section 17.

Section 8. Tax Covenant. The City covenants to undertake all actions required to maintain the tax-exempt status of interest on the Bonds under Section 103 of the Code as set forth in the Arbitrage and Tax Certification that will be executed at the closing of the Bonds.

The City has not designated the Bonds as "qualified tax-exempt obligations" under Section 265(b)(3) of the Code for banks, thrift institutions and other financial institutions.

The City has conducted a public hearing with respect to the Bonds and the New City Building to be financed with the proceeds thereof and approves the issuance of the Bonds, in accordance with Section 147(f) of the Code.

Section 9. Lost or Destroyed Bonds. If any Bonds are lost, stolen or destroyed, the Bond Registrar may authenticate and deliver a new Bond or Bonds of like amount, maturity and tenor to the Registered Owner upon the owner's paying the expenses and charges of the Bond Registrar and the City in connection with preparation and authentication of the replacement Bond or Bonds and upon his or her filing with the Bond Registrar and the City evidence satisfactory to both that such Bond or Bonds were actually lost, stolen or destroyed and of his or her ownership, and upon furnishing the City and the Bond Registrar with indemnity satisfactory to both.

Section 10. Form of the Bonds. The Bonds shall be in substantially the following form:

[STATEMENT OF INSURANCE]

UNITED STATES OF AMERICA

NO. _____

\$ _____

STATE OF WASHINGTON
CITY OF BELLEVUE
LIMITED TAX GENERAL OBLIGATION BOND, 2004 (NEW CITY BUILDING)

INTEREST RATE:

MATURITY DATE:

CUSIP NO:

REGISTERED OWNER:

PRINCIPAL AMOUNT: _____ THOUSAND AND
NO/100 DOLLARS

The City of Bellevue, Washington, a municipal corporation organized and existing under and by virtue of the laws and Constitution of the State of Washington (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or registered assigns, on the Maturity Date identified above, the Principal Amount specified above, unless redeemed prior thereto as provided herein, together with interest on such Principal Amount from the date hereof or the most recent date to which interest has been paid or duly provided for at the Interest Rate set forth above payable December 1, 2004, and semiannually thereafter on each June 1 and December 1 until payment of the principal sum has been made or duly provided for. Both principal of and interest on this bond are payable in lawful money of the United States of America. For so long as the bonds of this issue are held in fully immobilized form, payments of principal and interest thereon shall be made as provided in accordance with the operational arrangements of DTC referred to in the Blanket Issuer Letter of Representations from the City to The Depository Trust Company. In the event that the bonds of this issue are no longer held in fully immobilized form, interest on this bond shall be paid by check or draft of the Bond Registrar mailed (on the date such interest is due) to the Registered Owner hereof at the address appearing on the records maintained by the Bond Registrar as of the fifteenth day of the month preceding the interest payment date; provided, however, that if so requested in writing by the Registered Owner of at least \$1,000,000 principal amount, interest will be paid by wire transfer on the date due to an account with a bank located within the United States. Principal shall be paid to the Registered Owner hereof upon presentation and surrender of this bond at the principal office of the fiscal agency of the State of Washington in New York, New York (the "Bond Registrar").

Reference is made to Ordinance No. _____ (the "Bond Ordinance") as more fully describing the covenants with and the rights of registered owners of the bonds or registered assigns and the meanings of capitalized terms appearing on this bond which are defined in such ordinance.

This bond shall not be valid or become obligatory for any purpose or be entitled to any security or benefit under the Bond ordinance until the Certificate of Authentication hereon shall have been manually signed by the Bond Registrar.

The City hereby irrevocably covenants and agrees with the owner of this bond that it will include in its annual budget and levy taxes annually, within and as a part of the tax levy permitted to cities without a vote of the electorate, upon all the property subject to taxation in amounts sufficient, together with other amounts lawfully available therefore, to pay the principal of and interest on this bond as the same shall become due. The full faith, credit and resources of the City are hereby irrevocably pledged for the annual levy and collection of such taxes and the prompt payment of such principal and interest.

This bond is one of an issue of limited tax general obligation bonds of the City of like date and tenor, except as to number, interest rate and date of maturity, in the aggregate principal amount of \$_____, issued pursuant to the Bond ordinance to prepay the City's Outstanding Limited Tax General Obligation Bond Anticipation Note, 2002 (Taxable), issued to evidence a line of credit established to finance the acquisition of the New City Building, to reimburse the City for costs incurred in planning its renovation, to finance improvements thereto, to pay interest during renovation and to pay issuance costs.

The Bonds are subject to optional and mandatory redemption as provided in the Bond Ordinance.

Notice of any intended redemption shall be given not less than 30 nor more than 60 days prior to the redemption date by first class mail, postage prepaid, to the registered owner of any bond to be redeemed at the address appearing on the Bond Register. The requirements of the Bond ordinance shall be deemed to be complied with when notice is mailed as provided, regardless of whether or not it is actually received by the owner of any bond. Interest on all such bonds so called for redemption shall cease to accrue on the date fixed for redemption unless such bond or bonds so called for redemption are not redeemed upon presentation made pursuant to such call.

Portions of the principal sum of this bond in installments of \$5,000 or any integral multiple thereof may also be redeemed, and if less than all of the principal sum hereof is to be redeemed, upon the surrender of this bond at the principal office of the Bond Registrar there shall be issued to the registered owner, without charge therefor, for the then unredeemed balance of the principal sum hereof, at the option of the

owner, a bond or bonds of like maturity and interest rate in any of the denominations authorized by the Bond ordinance.

The City has not designated the bonds of this issue as "qualified tax-exempt obligations" for purchase by financial institutions.

The pledge of tax levies for payment of principal of and interest on the bonds may be discharged prior to maturity of the bonds by making provision for the payment thereof on the terms and conditions set forth in the Bond ordinance.

The bonds of this issue are issued in fully registered form in the denomination of \$5,000 each or any integral multiple thereof, provided that no bond shall represent more than one maturity. Upon surrender to the Bond Registrar, bonds are interchangeable for bonds in any authorized denomination of an equal aggregate principal amount and of the same interest rate and maturity. This bond is transferable only on the records maintained by the Bond Registrar for that purpose upon the surrender of this bond by the registered owner hereof or his/her duly authorized agent and only if endorsed in the manner provided hereon, and thereupon a new fully registered bond of like principal amount, maturity and interest rate shall be issued to the transferee in exchange therefor. Such exchange or transfer shall be without cost to the registered owner or transferee. The City may deem the person in whose name this bond is registered to be the absolute owner hereof for the purpose of receiving payment of the principal of and interest on this bond and for any and all other purposes whatsoever.

It is hereby certified and declared that this bond is issued pursuant to and in strict compliance with the Constitution and laws of the State of Washington and ordinances of the City, that all acts, conditions and things required to be done precedent to and in the issuance of this bond and the bonds of this issue have happened, been done and performed, and that this bond and the bonds of this issue do not exceed any constitutional or statutory limitations.

IN WITNESS WHEREOF, the City of Bellevue, Washington, has caused this bond to be signed on behalf of the City with the manual or facsimile signature of the Mayor, to be attested by the manual or facsimile signature of the Clerk of the City, and the seal of the City to be reproduced or impressed hereon, as of this 1st day of July, 2004.

CITY OF BELLEVUE, WASHINGTON

By _____
Mayor

ATTEST:

Clerk of the City

The Certificate of Authentication for the Bonds shall be in substantially the following form and shall appear on the front of each Bond:

CERTIFICATE OF AUTHENTICATION

Date of Authentication: _____

This bond is one of the bonds described in the within-referenced Ordinance No. _____ of the City of Bellevue, Washington, and is one of the Limited Tax General Obligation Bonds, 2004 (New City Building), dated July 1, 2004.

WASHINGTON STATE FISCAL
AGENCY, as Bond Registrar

By _____
Authorized Officer

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers
unto _____

PLEASE INSERT SOCIAL SECURITY OR TAXPAYER
IDENTIFICATION NUMBER OF TRANSFEREE

(Please print or typewrite name and address, including zip code of Transferee)

the within bond and all rights thereunder and does hereby irrevocably constitute and appoint _____ of _____, or its successor, as agent to transfer said bond on the books kept by the Bond Register for registration thereof, with full power of substitution in the premises.

DATED: _____, _____.

SIGNATURE GUARANTEED:

Notice: signature(s) must be _____

Guaranteed pursuant to law.

NOTE: The signature of this Assignment must correspond with the name of the registered owner as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatever.

Section 11. Execution of the Bonds. The Bonds shall be signed on behalf of the City by the manual or facsimile signature of the Mayor, shall be attested by the manual or facsimile signature of the City Clerk, and shall have a facsimile of the official corporate seal of the City impressed or imprinted thereon.

Only such Bonds as shall bear thereon a Certificate of Authentication in the form hereinbefore recited, manually executed by the Bond Registrar, shall be valid or obligatory for any purpose or entitled to the benefits of this ordinance. Such Certificate of Authentication shall be conclusive evidence that the Bonds so authenticated have been duly executed, authenticated and delivered hereunder and are entitled to the benefits of this ordinance.

In case either of the officers of the City who shall have executed the Bonds shall cease to be such officer or officers of the City before the Bonds so signed shall have been authenticated or delivered by the Bond Registrar, or issued by the City, such Bonds may nevertheless be authenticated, delivered and issued and upon such authentication, delivery and issuance, shall be as binding upon the City as though those who signed the same had continued to be such officers of the City. Any Bond may also be signed and attested on behalf of the City by such persons as at the actual

date of execution of such Bond shall be the proper officers of the City although at the original date of such Bond any such person shall not have been such officer.

Section 12. Application of Proceeds of Bonds. At the time of delivery of the Bonds, the proceeds of the Bonds shall be deposited as follows:

(a) The accrued interest, if any, to the date of delivery shall be deposited to the Debt Service Fund and used to pay a portion of interest on the Bonds on December 1, 2004.

(b) The remaining amount shall be deposited in a separate fund hereby established by the City to be known as the "New City Building Project Fund." Amounts deposited in the New City Building Project Fund shall be used to prepay the Note (together with accrued interest thereon), to reimburse the City for costs incurred to plan for renovation of the New City Building, to pay for improvements to the New City Building, to pay interest on the Bonds during renovation and to pay the costs of issuance of the Bonds.

Section 13. Award of Bid; Sale of the Bonds. The Council finds that the competitive bid submitted by _____ (the "Purchaser") and attached hereto as Exhibit B is reasonable and that it is in the best interest of the City that the Bonds shall be sold upon the conditions set forth in the bid, the Notice of Bond Sale, attached hereto as Exhibit A, and this ordinance. The City therefore accepts the bid. The Bonds shall be issued and delivered to the Purchaser upon payment of the purchase price specified in the bid.

Section 14. Bond Insurance. The Council hereby approves the commitment of the Insurer to provide a bond insurance policy guaranteeing the payment when due of

principal of and interest on the Bonds (the "Bond Insurance Policy"). The Council further authorizes and directs all proper officers, agents, attorneys and employees of the City to cooperate with the Insurer in preparing such additional agreements, certificates, and other documentation on behalf of the City as shall be necessary or advisable in providing for the Bond Insurance Policy.

Section 15. Official Statement. The City approves the preliminary official statement for the Bonds and authorizes the City Financial Advisor's distribution of the preliminary official statement in connection with the offering of the Bonds. Pursuant to the Rule, the City deems the preliminary official statement as final as of its date except for the omission of information dependent upon the pricing of the Bonds and the completion of the purchase contract. The City agrees to cooperate with the Purchaser to deliver or cause to be delivered, within seven business days from the date of the sale of the Bonds and in sufficient time to accompany any confirmation that requests payment from any customer of the Purchaser, copies of a final official statement in sufficient quantity to comply with paragraph (b)(4) of the Rule and the rules of the MSRB. The City authorizes the Purchaser to use the official statement, substantially in the form of the preliminary official statement, in connection with the sale of the Bonds. The City's Finance Director is authorized to approve, supplement or amend the final official statement.

Section 16. Severability. If any provision in this ordinance is declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall be deemed separable from the remaining provision of this ordinance

and shall in no way affect the validity of the other provisions of this ordinance or of the Bonds.

Section 17. Undertaking to Provide Ongoing Disclosure.

A. Contract/Undertaking. This section constitutes the City's written undertaking for the benefit of the owners of the Bonds as required by Section (b)(5) of the Rule.

B. Financial Statements/Operating Data. The City agrees to provide or cause to be provided to each NRMSIR and to the SID, if any, in each case as designated by the SEC in accordance with the Rule, the following annual financial information and operating data for the prior fiscal year (commencing in 2005 for the fiscal year ended December 31, 2004):

1. Annual financial statements, which statements may or may not be audited, showing ending fund balances for the City's general fund, prepared in accordance with the Budget Accounting and Reporting System prescribed by the Washington State Auditor pursuant to RCW 43.09.200 (or any successor statute) and generally of the type included in the official statement for the Bonds under the heading "Historical General Fund Operating Results";

2. The assessed valuation of taxable property in the City;
3. Property tax levy rate per \$1,000 of assessed valuation;
4. Outstanding general obligation debt of the City; and
5. Ad valorem taxes due and percentage of taxes collected.

Items 2-5 shall be required only to the extent that such information is not included in the annual financial statement.

Such annual information and operating data described above shall be provided on or before nine months after the end of the City's fiscal year. The City's current fiscal

year ends December 31. The City may adjust such fiscal year by providing written notice of the change of fiscal year to each then existing NRMSIR and the SID, if any. In lieu of providing such annual financial information and operating data, the City may cross-reference to other documents provided to the NRMSIR, the SID or to the SEC and, if such document is a final official statement within the meaning of the Rule, available from the MSRB.

If not provided as part of the annual financial information discussed above, the City shall provide the City's audited annual financial statement prepared in accordance with the Budget Accounting and Reporting System prescribed by the Washington State Auditor pursuant to RCW 43.09.200 (or any successor statute) when and if available to each then existing NRMSIR and the SID, if any.

C. Material Events. The City agrees to provide or cause to be provided, in a timely manner, to the SID, if any, and to each NRMSIR or to the MSRB notice of the occurrence of any of the following events with respect to the Bonds, if material:

1. Principal and interest payment delinquencies;
2. Non-payment related defaults;
3. Unscheduled draws on debt service reserves reflecting financial difficulties;
4. Unscheduled draws on credit enhancements reflecting financial difficulties;
5. Substitution of credit or liquidity providers or their failure to perform;

6. Adverse tax opinions or events affecting the tax-exempt status of the Bonds;
7. Modifications to the rights of Bond holders;
8. Bond calls (optional, contingent or unscheduled Bond calls other than scheduled sinking fund redemptions for which notice is given pursuant to Exchange Act Release 34-23856);
9. Defeasances;
10. Release, substitution or sale of property securing repayment of the Bonds; and
11. Rating changes.

Solely for purposes of disclosure, and not intending to modify this undertaking, the City advises that no debt service reserves or property secure payment of the Bonds.

D. Notification Upon Failure to Provide Financial Data. The City agrees to provide or cause to be provided, in a timely manner, to each NRMSIR or to the MSRB and to the SID, if any, notice of its failure to provide the annual financial information described in Subsection B above on or prior to the date set forth in Subsection B above.

E. Termination/Modification. The City's obligations to provide annual financial information and notices of material events shall terminate upon the legal defeasance, prior redemption or payment in full of all of the Bonds. This section, or any provision hereof, shall be null and void if the City (1) obtains an opinion of nationally recognized bond counsel to the effect that those portions of the Rule which

require this section, or any such provision, are invalid, have been repealed retroactively or otherwise do not apply to the Bonds; and (2) notifies each then existing NRMSIR and the SID, if any, of such opinion and the cancellation of this section.

Notwithstanding any other provision of this ordinance, the City may amend this Section 17, and any provision of this Section 17 may be waived with an approving opinion of nationally recognized bond counsel in accordance with the Rule.

In the event of any amendment of this Section 17, the City shall describe such amendment in the next annual report, and shall include, as applicable, a narrative explanation of the reason for the amendment and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the City. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a material event under subsection C, and (ii) the annual report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles.

F. Bond Owner's Remedies Under This Section. The right of any Bondowner or beneficial owner of Bonds to enforce the provisions of this section shall be limited to a right to obtain specific enforcement of the City's obligations hereunder, and any failure by the City to comply with the provisions of this undertaking shall not be an event of default with respect to the Bonds. For purposes of this section, "beneficial owner" means any person who has the power, directly or indirectly, to vote or consent

with respect to, or to dispose of ownership of, any Bonds, including persons holding Bonds through nominees or depositories.

Section 18. General Authorization; Ratification of Prior Acts. The Finance Director and other appropriate officers of the City are authorized to take any actions, including approval of the Preliminary Official Statement and distribution of the Official Notice of Bond Sale, and to execute documents as in their judgment may be necessary or desirable in order to carry out the terms of, and complete the transactions contemplated by, this ordinance. All acts taken pursuant to the authority of this ordinance but prior to its effective date are hereby ratified.

Section 19. Effective Date. This ordinance shall be effective five days after its passage and publication as required by law.

PASSED by the City Council of the City of Bellevue, Washington at a special meeting of the Council, this ____ day of June, 2004, and signed in authentication of its passage this ____ day of June, 2004.

(SEAL)

Mayor

Approved as to form:

Richard L. Andrews, City Attorney

Patrice C. Cole, Assistant City Attorney

Attest:

Myrna L. Basich, City Clerk

Published _____

CERTIFICATE

I, the undersigned, Clerk of the City of Bellevue, Washington (herein called the "City") and keeper of the records of the City Council of the City (herein called the "Council"), DO HEREBY CERTIFY:

1. That the attached ordinance is a true and correct copy of Ordinance No. _____ of the City (herein called the "Ordinance"), as finally passed at a special meeting of the Council of the City held on the ____ day of June, 2004, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of such meeting was given; that a quorum of the Council was present throughout the meeting and a legally sufficient number of members of the Council voted in the proper manner for the passage of said ordinance; that all other requirements and proceedings incident to the proper adoption or passage of said ordinance have been duly fulfilled, carried out and otherwise observed, and that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City this ____ of June, 2004.

City Clerk

SS-2-92

EXHIBIT A
[Attach Official Notice of Bond Sale Here]

EXHIBIT B
[Attach Copy of Purchaser's Bid Here]

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT

The Application of **FRANKLIN WEST LLC** for a rezone amending the existing Concomitant Agreement for Kelsey Creek Center to allow Health Club uses of less than 5,000 square feet. File No. 03-131400 – LQ.

FISCAL IMPACT

None of Record.

STAFF CONTACT

Wick Dufford, Hearing Examiner – 452-6935

POLICY CONSIDERATION

Whether the application complies with the Bellevue City Code and applicable decision criteria.

BACKGROUND

For background information, please review the attached Hearing Examiner's Summary.

EFFECTIVE DATE

If adopted, the Ordinance concerning this application would become effective July 15, 2004.

OPTIONS

1. Approve the application as recommended by the Examiner.
2. Approve the application with additions or modifications.
3. Deny the application.
4. Remand the matter.

HEARING EXAMINER'S RECOMMENDATION

Move to adopt the Hearing Examiner's Findings and Recommendation, and approve the Ordinance.

ATTACHMENTS

Ordinance
Site Maps

AVAILABLE IN COUNCIL OFFICE

The Department (PCD) supporting file is available for review in the City Council Office.

SUMMARY

The City Council is considering the Hearing Examiner's Recommendation concerning the application of **FRANKLIN WEST LLC** for a rezone amending the existing Concomitant Agreement for Kelsey Creek Center to allow Health Club uses of less than 5,000 square feet.

The Kelsey Creek Center is located at 15015 Main Street. The property is zoned Community Business (CB). Health club uses are permitted outright in CB zones. However, health clubs are not among the recreational uses allowed in this shopping center under the CZA as currently written.

The rezone would legitimize "Curves" a weight loss and fitness enterprise that has become a tenant of space within the Center. The activities at "Curves" meet the definition of a health club. The rezone will resolve an enforcement action.

1. BACKGROUND

The application and an environmental checklist were submitted on November 21, 2003. The application was deemed complete on January 29, 2004. A public meeting was held on April 6, 2004, at the East Bellevue Community Council's regularly scheduled meeting. Public comment was provided by only one person who expressed concerns related to parking and traffic associated with including health clubs at this location. These issues were addressed by Staff during the application review process.

No other public comment (written correspondence, phone calls, or emails) was received. A Determination of Non-Significance (DNS) under the State Environmental Policy Act (SEPA) was issued by the City on April 29, 2004. The DNS was not appealed. The hearing was noticed by the PCD to be held on May 13, 2004.

2. APPLICATION BEFORE EXAMINER

The public hearing before the Examiner was held, as noticed, on May 13, 2004 at 7:00 p.m. The applicant was represented by Nat Franklin, owner of Kelsey Creek Center and Anne Rennick, Planner represented the City. There was no public testimony.

On May 28, 2004, the Hearing Examiner issued Findings of Fact, Conclusions of Law and a Recommendation that the application be **APPROVED** subject to a condition. The deadline for filing an appeal of the Examiner's Recommendation was June 11, 2004. No appeals were filed.

3. SITE CHARACTERISTICS

The Kelsey Creek Center is located just north of the Larson Lake portion of the Lake Hills Greenbelt, east of 148th Avenue SE and south of Main Street. The existing 16 acre site referred to as the Kelsey Creek Center is addressed with a single address, 15015

Main Street. However, the shopping center consists of three separate parcels created by a three lot short plat in 1998 (KC Recording No. 199803099020). There is also a separate parcel to the south of the three lot short plat, which is entirely classified as a Native Growth Protection Easement (NGPE), this NGPE extends approximately 18feet onto Lots 2 & 3 of the short plat (KC Recording No. 198809129014).

Prior to 1965 the site was occupied by residential structures and farmland. Commercial use of the property began occurring in the late 1960's with the Kelsey Creek Center developed by 1968, including the Kmart, a music store, a pharmacy, and other retail uses. The subject property was purchased by the current owner in 1988.

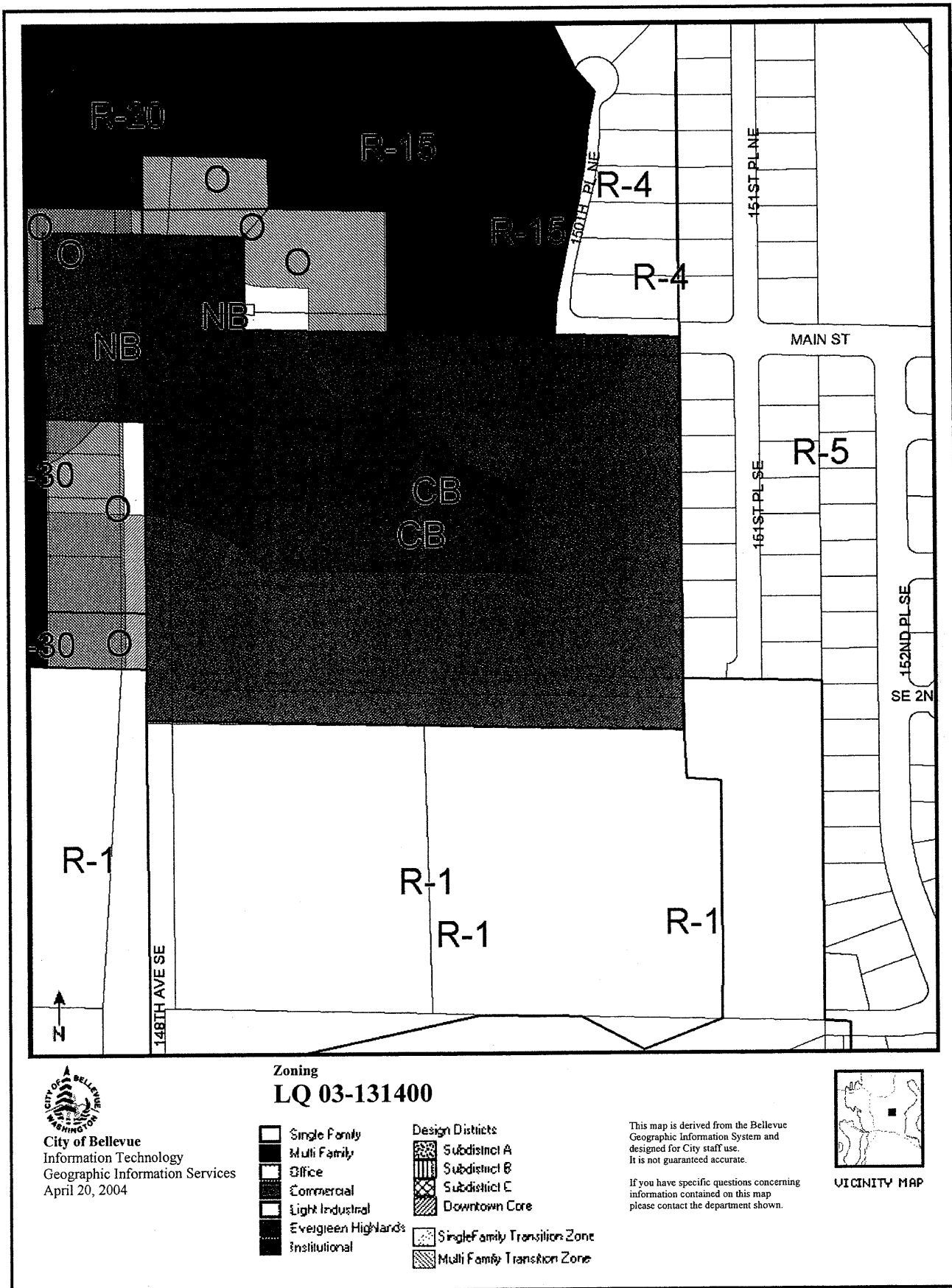
4. COMMENTS

As referenced in Section 2 above, there was no public testimony.

5. HEARING EXAMINER'S RECOMMENDATION

The Hearing Examiner recommends that the City Council **APPROVE** the application with one condition, which concurs with the Recommendation of the DPCD. The condition is:

This rezone applies only to the inclusion of "Health Club" as a permitted use; Health Club use may not exceed a total area of 5,000 net square feet in the Kelsey Creek Center.



B31

CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. _____

AN ORDINANCE approving the rezone application of Franklin West, LLC (Kelsey Creek Center) by amendment of the 1987 Concomitant Agreement No. 12967 adopted by Ordinance No. 3835 to allow Health Club uses of less than 5,000 square feet.

WHEREAS, on November 21, 2003, an application was filed seeking a change to the Concomitant Agreement to allow Health Club uses of less than 5,000 square feet; and

WHEREAS, the request was considered at a public meeting of the East Bellevue Community Council on April 6, 2004; and

WHEREAS, a public hearing was held before the Hearing Examiner for the City of Bellevue on May 13, 2004 pursuant to notice required by law; and

WHEREAS, on May 28, 2004, the Hearing Examiner recommended approval of the rezone application with a condition, and made and entered findings of fact and conclusions thereon in support of that recommendation; and

WHEREAS, the City Council concurs in the findings of fact and conclusions of the Hearing Examiner and has determined that the public use and interest will be served by approving the rezone application to allow Health Club uses of less than 5,000 square feet; and

WHEREAS, the City has complied with the requirements of the State Environmental Policy Act and the City Environmental Procedures Code now therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. The City Council adopts the findings of fact and conclusions based thereon, made and entered by the Hearing Examiner in support of his recommendation to the City Council to approve the rezone application to allow Health Club uses of less than 5,000 square feet to the 1987 Concomitant Zoning Agreement No. 12967 adopted by Ordinance No. 3835.

Section 2. This rezone shall be subject to the following condition:

This rezone applies only to the inclusion of "Health Club" as a permitted use; Health Club use may not exceed a total area of 5,000 net square feet in the Kelsey Creek Center.

Section 3. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

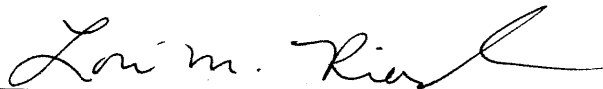
Passed by the City Council this _____ day of _____,
2004, and signed in authentication of its passage this _____ day of _____
_____, 2004.

(SEAL)

Connie B. Marshall, Mayor

Approved as to form:

Richard L. Andrews, City Attorney



Lori M. Riordan, Deputy City Attorney

Attest:

Myrna L. Basich, City Clerk

Published _____

CITY COUNCIL AGENDA MEMORANDUM

SUBJECT

The Application of **OVERLAKE HOSPITAL MEDICAL CENTER and THE CITY OF BELLEVUE** for the rezone of five parcels from Office Limited Business (OLB) to Institutional District (I). The File No. is 04-104728-LQ/

FISCAL IMPACT

None of Record.

STAFF CONTACT

Gordon F. Crandall, Hearing Examiner – 452-6935

POLICY CONSIDERATION

Whether the application complies with the Bellevue City Code and applicable decision criteria.

BACKGROUND

For background information, please review the attached Hearing Examiner's Summary.

EFFECTIVE DATE

If adopted, the Ordinance concerning this application would become effective July 14, 2004.

OPTIONS

1. Approve the application as recommended by the Examiner.
2. Approve the application with additions or modifications.
3. Deny the application.
4. Remand the matter.

HEARING EXAMINER'S RECOMMENDATION

Move to adopt the Hearing Examiner's Findings and Recommendation, and approve the Ordinance.

ATTACHMENTS

Ordinance
Site Maps

AVAILABLE IN COUNCIL OFFICE

The Department (PCD) supporting file is available for review in the City Council Office.

SUMMARY

The City Council is considering the Hearing Examiner's Recommendation concerning the application of **OVERLAKE HOSPITAL MEDICAL CENTER** and the **CITY OF BELLEVUE** for the rezone of five parcels from Office Limited Business (OLB) to Institutional District (I). The application file number is 04-104728-LQ

Two applications to rezone five parcels of land for the Overlake Hospital Medical Center were filed. One application was submitted by Overlake Hospital Medical Center for four sites. The other application was submitted by Goran Sparmann, Director of the City of Bellevue's Transportation Department.

The parcels are described in the City's Staff Report at page 2. They are:

1041 – 116th Avenue NE
1031 – 116th Avenue NE
1011 – 116th Avenue NE
849 – 116th Avenue NE
825 – 116th Avenue NE

The effect of rezoning the five parcels from OLB to I will be to allow institutional use of the property, increase the height limit from 45 feet (75 feet if within 475 feet of I-405) to 60 feet (75 – 120 feet if within 175 feet of I-405 with provision of public amenities), and allow lot coverage by structure to increase from 35% to 50%.

1. BACKGROUND

In 1999, the City Council approved a Rezone and Master Development Plan for the Overlake Hospital campus. Property owned by the hospital within the Master Planning area was rezoned from OLB to I. Five parcels within the planning area were owned by others and were not rezoned at that time.

The hospital has since acquired three of the five remaining parcels. The fourth, 1041 – 116th Avenue NE is leased to Overlake Hospital until 2014, with an option to purchase. The applicant represented the property owner of this parcel at the hearing. The fifth parcel is owned by the City of Bellevue and assigned to the Transportation Department. This parcel, site of the ^{Taste of} Tokyo Restaurant, was acquired for the NE 10th Street right-of-way, but is to be exchanged for another location on the hospital site for that purpose. All of the aforementioned properties front on 116th Avenue NE.

Draft and Final EISs were prepared in connection with the 1999 Rezone Ordinance and Master Development Plan. The Final EIS provided programmatic-level environmental impact analysis for future development of the site over the next 30 years. A Determination of Non-Significance (DNS) was issued for this rezone proposal and was not appealed.

A public meeting was held and the public hearing was noticed. No members of the public attended the informational public meeting.

2. APPLICATION BEFORE EXAMINER

The public hearing before the Examiner was held, as noticed, on May 6, 2004 at 7:00 p.m. The applicant, Overlake Hospital, was represented by John C. McCullough, Attorney-at-Law (firm of McCullough Hill Fikso Kretschmer Smith). Carol Saari, Planner, represented the City. As with the informational meeting, no one from the public appeared or testified at the public hearing. There were no letters or telephone calls from the public concerning the applications. At the hearing four exhibits were entered. (See exhibit section of report.)

On May 21, 2004, the Hearing Examiner issued Findings of Fact, Conclusions of Law and a Recommendation that the application be **APPROVED subject to Conditions**. The deadline for filing an appeal of the Examiner's Recommendation was June 4, 2004. No appeals were filed.

3. SITE CHARACTERISTICS

The five parcels in question have a total area of 2.1 acres and are located on the west side of 116th Avenue NE in the Wilburton/NE 8th Street Subarea.

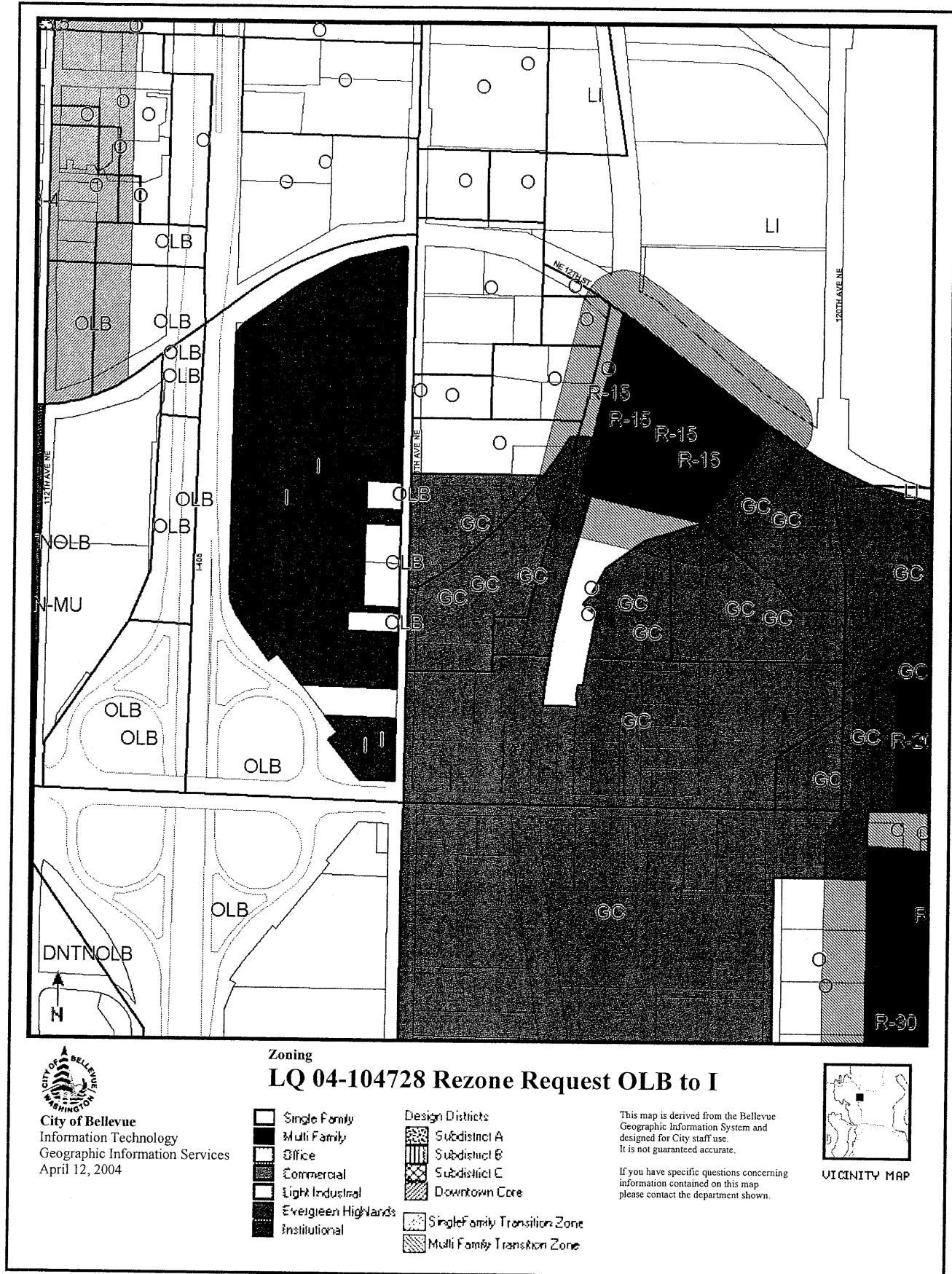
These parcels abut 116th Avenue NE along their eastern property line and except where they abut each other are surrounded on their north, west and southern sides by Overlake Medical Center property currently designated in the Institutional District.

4. COMMENTS

As referenced in Section 2 above, there was no public testimony at the examiner hearing, and no letters or telephone calls were received regarding the application.

5. HEARING EXAMINER'S RECOMMENDATION

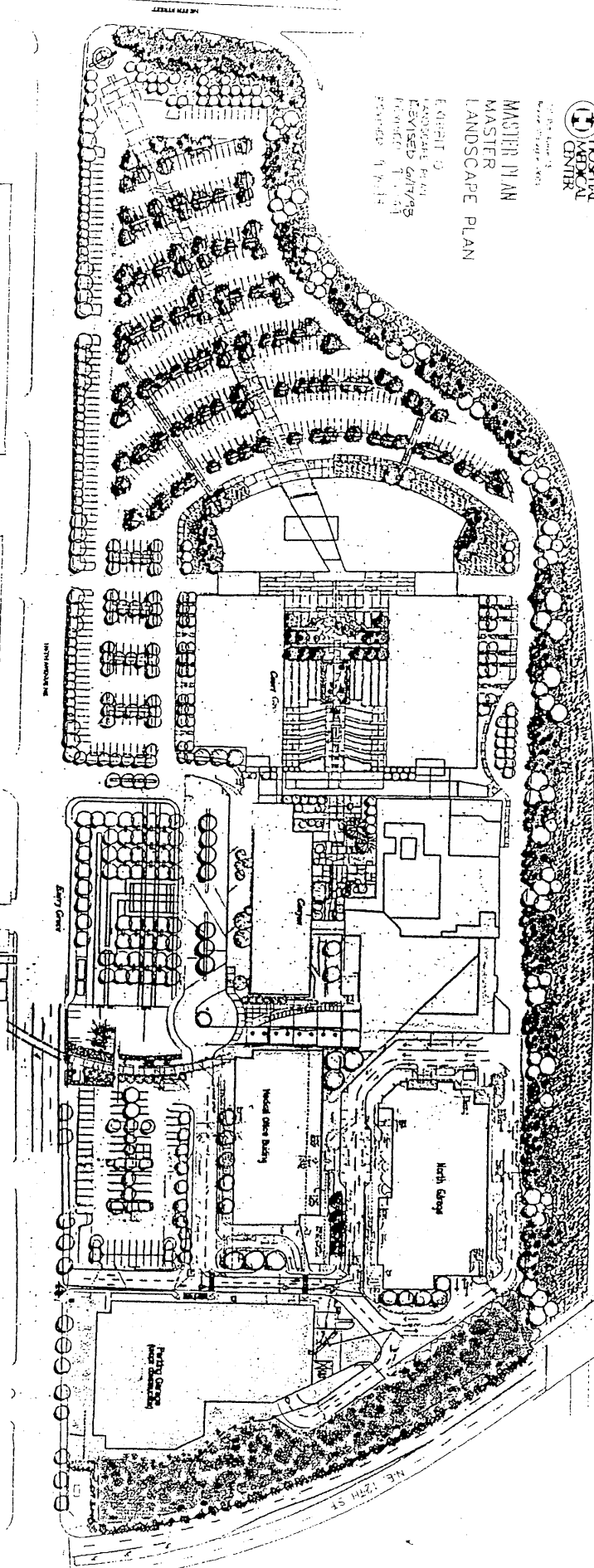
The Hearing Examiner recommends that the City Council **APPROVE** the application with the conditions recommended by the DPCD.



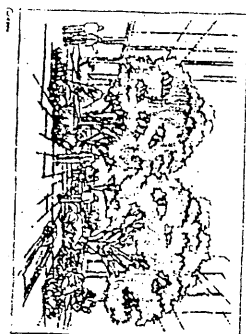
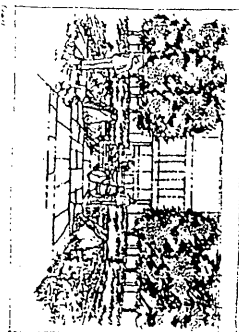
B80



OVERLAKE HOSPITAL
MEDICAL CENTER
MASTER PLAN
LANDSCAPE PLAN
EXHIBIT C
LANDSCAPE PLAN
REVISED 6/17/93
PROJECT 1-1-91
REVISED 4-7-93



OVERLAKE HOSPITAL
LANDSCAPE PLAN



CITY OF BELLEVUE, WASHINGTON

ORDINANCE NO. _____

AN ORDINANCE approving the rezone applications Overlake Hospital Medical Center and the City of Bellevue to rezone property located at 1041, 1031, 1011, 849 and 825 – 116th Ave NE from Office Limited Business (OLB) to Institutional District (I).

WHEREAS, Overlake Hospital Medical Center and the City of Bellevue filed applications to rezone property located at 1041, 1031, 1011, 849 and 825 – 116th Ave NE from Office Limited Business (OLB) to Institutional District (I); and

WHEREAS, on May 6, 2004, a public hearing was held on the rezone application before the Hearing Examiner for the City of Bellevue pursuant to notice as required by law; and

WHEREAS, on May 21, 2004, the Hearing Examiner recommended approval of the rezone application and made and entered findings of fact and conclusions based thereon in support of that recommendation, and no timely appeal thereof has been filed; and

WHEREAS, the City Council concurs in the findings of fact and conclusions of the Hearing Examiner and has determined that the public use and interest will be served by approving the rezone of said property from Office Limited Business (OLB) to Institutional District (I); and

WHEREAS, the City has complied with the requirements of the State Environmental Policy Act and the City Environmental Procedures Code; now, therefore,

THE CITY COUNCIL OF THE CITY OF BELLEVUE, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. The City Council adopts the findings of fact and conclusions based thereon, made and entered by the Hearing Examiner in support of the recommendation to the City Council with regard to the hereinafter described property located at 1041, 1031, 1011, 849 and 825 – 116th Ave NE, as set forth in "Findings, Conclusions and Recommendations of the Hearing Examiner for the City of Bellevue in the Matter of the Applications of Overlake Hospital Medical Center and the City of Bellevue to Rezone Five Parcels from Office Limited Business (OLB) to Institutional District (I), File No. 04-104728-LQ."

Section 2. The zoning on the below described real property is hereby amended to Institutional District (I):

That portion of records of King County, Washington, described as follows:

1041 – 116th Avenue NE:

The South 99.00 feet of the North 303.50 feet of the West 125.00 feet of the East 155 feet of the Southeast quarter of the Southeast quarter of Section 29, Township 25 North, Range 5 East, W.M. in King County, Washington.

1031 – 116th Avenue NE:

Lot 1, City of Bellevue Short Plat No. 78-41, as filed under Recording No. 7806190928, in King County, Washington.

1011 – 116th Avenue NE:

Lot 2, City of Bellevue Short Plat No. 78-41, as filed under Recording No. 7806190928, in King County, Washington.

849 – 116th Avenue NE:

Lot 1, City of Bellevue Short Plat No. 77-64, as filed under Recording No. 7709260748, in King County, Washington.

825 – 116th Avenue NE:

That portion of the North 105 feet of the South 400.00 feet of the Southeast quarter of the Southeast quarter of Section 29, Township 25 North, Range 5 East, W.M. in King County, Washington, lying Northeasterly of the Easterly margin of SR 405, as shown on Primary State Highway No. 1(SR 405) Right of Way Plans, sheet 15 of 27, dated July 1, 1952;

Except the East 30.00 feet thereof.

Section 3. This rezone shall be subject to the following conditions:

A. **Conditions of Ordinance No. 5174:** All conditions of Ordinance No. 5174 shall remain in effect and apply to these five parcels.

1. **Design Review Required:** Prior to issuance of a construction permit, Design Review is required for each phase of development of the Master Development Plan (LUC 20.25J.010).

2. **Revisions to Master Development Plan:** If revisions to the Master Development Plan are proposed in the future, the revisions will be reviewed through the appropriate process provided in LUC 20.25J.050E or as required by the provisions of the Land Use Code in effect at that time.

3. **Building Height:** If building height above 75 feet is proposed in future phases, the review of the specific design details for each element of the amenity plan shall be reviewed and approved as part of the required Design Review application for each phase, and the required amenities shall be constructed prior to occupancy of the first building utilizing the height allowance above 75 feet. (LUC 20.25J.050E)

4. **Transportation Management Plan:** Prior to issuance of a Certificate of Occupancy of future phases of development, the Applicant shall be required to submit a detailed Transportation Management Plan to increase employee use of transit and car/vanpools.

a. The TMP Shall include the following mandatory strategies as required by BCC 14.60.070:

1. Posting of rideshare and transit information;
2. Distribution of rideshare and transit information;
3. Provision of a Transportation Coordinator;
4. Provision of preferential parking;
5. Subsidized transit passes and carpool subsidies;
6. Provision for a guaranteed ride home program.

b. The TMP shall also include the following strategies to maximize the probability of success of its TMP program:

1. In cooperation with Metro, conduct an analysis of the feasibility of implementing a transit shuttle between the Bellevue Transit Center and the Medical Center. The analysis, including findings and conclusions, shall be submitted to the City for its use in determining whether a transit shuttle should be included in the Medical Center's TMP at the time of future phases.

2. The applicant shall be required to include in its TMP a specific plan for implementation, monitoring, evaluation and reporting, as well as periodic review of the TMP with Metro and the City.

3. The goal of the TMP shall be to reduce the hospital's single occupancy vehicle rate for the target employee population to 75% and to increase the mode split to 25%. (BCC 14.60.070)

5. **Transportation Management Plan:** Based upon factors which are unique to the Medical Center (including, but not limited to existing employee shifts and shift changes, employee residence patterns, labor agreement constraints, and changes in the labor force), Overlake Hospital shall be required to undertake, at

its own expense, a study including a survey of its current full-time and part-time employees to determine whether and under what circumstances it may be feasible to incorporate the following TMP program elements. The study shall be completed prior to issuance of a Certificate of Occupancy for the first phase of development.

a. Coordinate its TMP with the TMPs of other nearby public and private sector employees in Bellevue.

b. Implement other potential TMP strategies on its own or in cooperation with other Bellevue employers, including, but not limited to customized bus routes, on-site day care, and other HOV utilization incentives and disincentives (parking charges).

c. Implement policies which encourage "flex-time" schedules for appropriate full-time and part-time employees who may be able to participate in TMPs of other Bellevue employers or in programs that may be feasibly implemented in cooperation with other Bellevue employers.
(BCC 14.60.070)

6. **Phasing Plan:** Overlake Hospital shall complete frontage and site improvements consisting with the Master Plan Development Plan and according to the following schedule. (See attached Phasing Plan [B-5, B-6 and Master Development Plan, B-7)

Phase II Improvements 2002-2005

Demolish 1199 Building (Medicenter South) and construct surface parking and landscaping.

Phase III Improvements: 2006-2009

Demolish 1051 Building and install landscaping and surface parking.

Phase IV Improvements 2010-2015

Demolish 1031 Building (OIMA North) and construct surface parking, south half of new main entrance improvements and landscaping. This is conditioned upon future Acquisition of the property. Applicant has agreed that upon acquisition of the property earlier than Phase IV, the demolition and improvements would occur not later than five years following such acquisition.

Demolish 1041 Building (Griffith) and complete main entrance improvements with parking and landscaping. This is conditioned upon future acquisition of the property. Applicant has agreed that upon an acquisition of the property earlier than Phase IV, the demolition and improvements would occur not later than seven years following such acquisition.

Demolish 1231 Building, install landscaping and complete north driveway entrance improvements. (LUC 20.25J.030)

7. **Accelerated Construction of Improvements:** If the hospital acquires properties fronting on 116th Avenue NE and existing leases expire or are terminated prior to the timeframes indicated in the Phasing Plan, the applicant shall install the required Master Development Plan improvements on the applicable properties within seven years of the date that the hospital has control of the property. (LUC 20.20.30A, LUC 20.30A, Rezone Ordinance No. 5174)

B. **Amending Ord. 5174 Phasing Plan:** The applicant shall submit an amendment to the Phasing Plan schedule originally approved with Ordinance 5174 (Condition #6) proposing a new timing schedule for when Phase II-IV improvements will be completed. These amendments to the Phasing Plan shall be submitted in conjunction with or prior to any future development proposal and/or design review application associated with Overlake Hospital Medical Center campus expansion. (LUC 20.30A; Rezone Ordinance No. 5174)

Section 4. This ordinance shall take effect and be in force five (5) days after passage and legal publication.

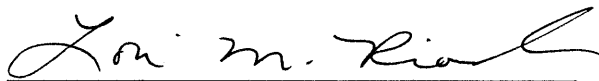
Passed by the City Council this _____ day of _____, 2004, and signed in authentication of its passage this _____ day of _____, 2004.

(SEAL)

Connie B. Marshall, Mayor

Approved as to form:

Richard L. Andrews, City Attorney



Lori M. Riordan, Deputy City Attorney

Attest:

Myrna L. Basich, City Clerk

Published _____